

110. CRIMINAL LAW**II. DEFENSES IN GENERAL.**(Cont'd)

- (5). — Decoys, informers, or artifice.
- (6). Particular cases and offenses.
- (6.1). — In general.
- (7). — Liquor, gaming, and sex offenses.
- (8). — Narcotics and drugs.
- 37.10. — Discriminatory or selective prosecution.
 - (1). In general.
 - (2). Particular cases.
- 37.15. — Vindictive prosecution.
 - (1). In general.
 - (2). Particular cases.
- 37.20. Good faith; advice of counsel.
- 38. Compulsion or necessity; justification in general.
Homicide, see HOMICIDE ¶763.
- 38.5. Conduct or condition subsequent to offense.
- 39. Ratification by victim; consent in general.
- 40. Condonation and settlement.
- 41. Reparation.
- 42. Immunity to one furnishing information or evidence.
 - 42.1. — In general.
 - 42.2. — Power to grant immunity.
 - 42.3. — Types of immunity.
 - (1). In general.
 - (2). Transactional immunity.
 - (3). Use immunity.
 - 42.4. — Grounds or justification for grant of immunity.
 - 42.5. — Agreements granting immunity.
 - (1). In general.
 - (2). Validity.
 - (3). Performance and breach.
 - 42.6. — Effect of grant of immunity.
 - 42.7. — Enforcement of grant of immunity.
 - (1). In general.
 - (2). Evidence.
 - (3). Hearing.
- 43. Availability or pendency of, or recovery in, civil action.
- 43.5. Inconsistent defenses.
Excludes alibi, see ¶31.5, *above, and entrapment, see* ¶37, *above.*

III. ATTEMPTS.

- 44. In general.

IV. SOLICITATION.

- 45. In general.

V. MISCELLANEOUS CRIMES.

- 45.10. Abduction.
- 45.15. Affray.
- 45.20. Blasphemy.
- 45.25. Common Scold.
- 45.30. Dueling.
- 45.35. Embracery.
- 45.40. Fornication.
- 45.45. Miscegenation.
- 45.50. Piracy.
- 45.55. Prize Fighting.

VI. CAPACITY TO COMMIT AND RESPONSIBILITY FOR CRIME.

Competency to stand trial, see MENTAL HEALTH ¶432; *homicide, see HOMICIDE* ¶815–829.

- 46. Capacity in general.
- 47. Insanity.
- 48. — In general.
- 49. — Insane delusions or partial insanity.
- 50. — Irresistible impulse.
- 51. — Moral and emotional insanity.
- 52. Intoxication.
- 53. — In general.
- 54. — Aggravation of offense.
- 55. — Existence of specific intent essential to offense.
- 56. — Involuntary intoxication.
- 57. — Delirium tremens or insanity resulting from intoxication.
- 58. Persons acting under authority or direction of others.

VII. PARTIES TO OFFENSES.

- 59. Principals, aiders, abettors, and accomplices in general.
 - (1). In general.
 - (2). Existence of distinction.
 - (3). Presence.
 - (4). Community of unlawful intent.
 - (5). Aiding, abetting, or other participation in offense.
- 60. Constitutional and statutory provisions.

110. CRIMINAL LAW**VII. PARTIES TO OFFENSES.**(Cont'd)

- 61. Principals in first degree.
- 61.1. — In general.
- 62. — Commission of offense by agent or employee.
- 63. Principals in second degree.
- 64. — In general.
- 65. — Presence.
- 66. — Community of unlawful purpose.
- 67. — Aiding or abetting or other participation in offense.
- 68. Accessories before the fact.
- 69. — In general.
- 70. — Absence.
- 71. — Community of unlawful purpose.
- 72. — Incitement to offense.
- 73. — Repentance and withdrawal.
- 74. Accessories after the fact.
- 75. — In general.
- 76. — Knowledge of offense.
- 77. — Assistance.
- 78. Prosecution and punishment of principals in first and second degree.
- 79. Prosecution and punishment of principals and accessories.
- 80. — In general.
- 81. — Accessories before the fact.
- 82. — Accessories after the fact.

VIII. JURISDICTION.

See also CONSTITUTIONAL LAW §4459.

- 83. Nature and scope of criminal jurisdiction.
- 84. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Right to confer and limit jurisdiction.
 - (3). Conferring extraterritorial jurisdiction.
 - (4). Creating local and special courts.
 - (5). Impairing or enlarging jurisdiction conferred by Constitution.
 - (6). Effect of statute conferring jurisdiction on another court.
- 85. Courts invested with criminal jurisdiction.
- 86. — In general.
- 87. — Limited or inferior jurisdiction.
- 88. — Municipal and other local courts.
- 89. — United States courts.
- 90. Jurisdiction of justices of the peace, police justices, and other officers.

VIII. JURISDICTION.(Cont'd)

- (1). In general.
- (2). Jurisdiction of offense.
- (3). Extent of punishment.
- (4). Territorial extent.
- (5). Concurrent jurisdiction.
- (6). Effect of conferring jurisdiction on other courts of same grade.
- 91. Jurisdiction of offense.
- 92. — In general.
- 93. — Nature or grade of offense.
- 94. — Extent of penalty.
- 95. — Offenses against United States and state or territory.
- 96. — Offenses against state and municipality.
- 97. — Locality of offense.
 - (5). In general.
 - (1). Offenses outside of state.
 - (2). Waters bordering on or forming boundaries of state.
 - (3). Offenses on the high seas or beyond the jurisdiction of any state.
 - (4). Territory ceded to or under exclusive control of United States.
 - (5). Inferior and municipal courts.
- 98. Jurisdiction of the person.
- 99. Mode of acquiring jurisdiction.
- 100. Exercise of jurisdiction in general.
 - (1). In general.
 - (2). Different departments of same court.
 - (3). Priority of jurisdiction.
- 101. Transfer of causes.
 - (5). In general.
 - (1). Between federal courts.
 - (2). Between state courts in general.
 - (3). Grounds for transfer between state courts.
 - (4). Proceedings for transfer between state courts.
 - (5). Proceedings after transfer between state courts.
 - (6). Between justices' courts.
- 102. Loss or divestiture of jurisdiction.
- 103. Jurisdiction to be shown by record.
- 104. Presumptions as to jurisdiction.
- 105. Waiver of objections.

110. CRIMINAL LAW**IX. VENUE.***See also CONSTITUTIONAL LAW* ¶4459.**(A) PLACE OF BRINGING PROSECUTION.**

- 106. Nature and necessity of venue in prosecution.
- 107. Constitutional and statutory provisions.
- 108. Locality of offense in general.
 - (1). In general.
 - (2). Organization of new county.
- 109. Offenses committed without presence of accused.
- 110. Principals and accessories.
- 111. Offenses committed on or near boundary between counties.
- 112. Offenses committed partly in one county and partly in another.
 - (1). In general.
 - (2). Abortion.
 - (3). Conspiracy.
 - (4). Embezzlement.
 - (5). False pretenses and frauds.
 - (6). Homicide.
 - (7). Larceny.
 - (8). Pollution of waters.
 - (9). Receiving stolen goods.
- 113. Offenses against United States.
- 114. Offenses committed beyond territorial limits of jurisdiction.

(B) CHANGE OF VENUE.

- 115. Power and duty of court in general.
- 116. Constitutional and statutory provisions.
- 117. Right of prosecution to change.
- 118. Right of accused to change.
- 119. — In general.
- 120. — Codefendants.
- 121. Discretion of court.
- 122. Successive applications.
- 123. Grounds for change.
- 124. — In general.
- 125. — Disqualification or prejudice of judge.
- 126. — Local prejudice.
 - (1). In general.
 - (2). Particular offenses.
- 127. — Convenience of witnesses.
- 128. Change on court's own motion.
- 129. Application.
- 130. — In general.

IX. VENUE.(Cont'd)

- 131. — Jurisdiction.
- 132. — Time for making.
- 133. — Notice.
- 134. — Affidavits and other proofs.
 - (1). In general.
 - (2). Affidavits.
 - (3). Counter affidavits and other evidence.
 - (4). Weight and effect of opposing affidavits or other evidence.
- 135. — Hearing in general.
- 136. — Presence of accused at hearing.
- 137. — Determination.
- 138. Conditions on granting or refusing change.
- 139. County or district to which change may be made.
- 140. Order granting or refusing change.
- 141. Transmission of record or transcript.
- 142. Jurisdiction and proceedings after change.
- 143. Remand.
- 144. Jurisdiction and proceedings after refusal.

(C) OBJECTIONS AND EXCEPTIONS.

- 145. In general.

X. LIMITATION OF PROSECUTIONS.

- 145.5. Nature and scope of limitations.
- 146. Constitutional and statutory provisions.
- 147. Limitations applicable.
- 148. Commencement of period of limitation.
- 148.1. — In general.
- 149. — Commission of offense in general.
- 150. — Continuing offenses.
- 151. Exceptions and suspension.
- 151.1. — In general.
- 152. — Absence, nonresidence, or concealment of accused.
- 153. — Fugitives from justice.
- 154. — Concealed or unknown offense.
- 155. Computation of time.
- 156. Commencement of prosecution.
- 157. — In general.
- 158. — Continuance or delay in prosecution.
- 159. — Amendment of proceedings.

110. CRIMINAL LAW

X. LIMITATION OF PROSECUTIONS.(Cont'd)

160. — New proceedings after dismissal or failure of original prosecution.

XI. FORMER JEOPARDY (OBSOLETE, SEE DOUBLE JEOPARDY).

XII. PRETRIAL PROCEEDINGS.

See also CONSTITUTIONAL LAW ¶4567, 4568.

205. Nature and scope of preliminary proceedings.
206. Constitutional and statutory provisions.
207. Jurisdiction of preliminary proceedings.
- (1). In general.
 - (2). Preliminary complaint or affidavit.
 - (3). Preliminary warrant or other process.
 - (4). Preliminary examination, holding over, and commitment.
208. Preliminary complaint or affidavit.
- 208.1. — In general.
209. — Nature and necessity.
210. — Persons who may make.
211. — Requisites and sufficiency.
- (1). In general.
 - (2). Verification, signature, and jurat.
 - (3). Information and belief.
 - (4). Charging particular offenses.
212. — Examination of witnesses and evidence.
213. — Defects and objections.
214. — Amendment or substitution.
215. Preliminary warrant or other process.
- 215.1. — In general.
216. — Nature and necessity.
217. — Issuance.
218. — Requisites and sufficiency.
- (1). In general.
 - (2). Directions for execution and return.
 - (3). Name and description of accused.
 - (4). Seal and signature.
 - (5). Description and venue of offense.
219. — Defects and objections.
220. — Amendment and return.
221. Removal of accused to other county or district for examination.
222. Necessity and requisites of preliminary examination.
- 222.1. — In general.

XII. PRETRIAL PROCEEDINGS.(Cont'd)

223. — Nature and necessity.
224. — Right of accused to examination.
225. — Waiver of examination.
226. — Authority of magistrate.
227. — Place for examination.
228. — Time for examination.
229. Conduct of preliminary examination.
230. — In general.
231. — Presence and rights of accused.
232. — Representation by attorneys.
233. — Use and effect of complaint or affidavit.
234. — Reception of evidence.
235. — Testimony or statement of accused.
236. — Reduction of proceedings to writing.
237. — Rehearing or new trial.
238. Presumptions, burden of proof, and weight and sufficiency of evidence.
- (1). In general.
 - (2). Sufficient, reasonable, or probable cause.
 - (3). Particular offenses.
 - (3.1). — In general.
 - (4). — Burglary, larceny, robbery, and false pretenses; stolen property.
 - (5). — Homicide, assault, and rape.
239. Discharge of accused.
240. Holding accused to answer.
241. Commitment of accused.
242. Removal of accused to other county or district for trial.
- (1). In general.
 - (2). District of Columbia.
 - (3). Conditions precedent to application.
 - (4). Sufficiency of indictment or complaint.
 - (5). Conclusiveness and effect of indictment.
 - (6). Determination of validity of indictment.
 - (7). Evidence.
 - (8). Application and hearing thereon.
 - (9). Second removal.
 - (10). Warrants.
 - (11). Review.

110. CRIMINAL LAW**XII. PRETRIAL PROCEEDINGS.(Cont'd)**

- 243. Habeas corpus for production of accused.
- 244. Record and certificate or return of preliminary examination.
- 245. Objections and exceptions in preliminary proceedings.

XIII. NONJURY OR BENCH TRIAL AND CONVICTION.

- 247. In general; nature and form of proceeding.
- 248. Constitutional and statutory provisions.
- 249. Offenses which may be prosecuted summarily.
- 250. Jurisdiction.
- 251. Rights of accused in general.
- 252. Complaint or information and plea.
- 253. Removal of case to grand jury.
- 254. Trial.
 - 254.1. — In general.
 - 254.2. — Trial on transcript or stipulated facts; equivalence to guilty plea.
 - 254.3. — Remarks and conduct of judge.
- 255. — Reception of evidence.
 - 255.1. — Counsel; conduct and argument.
 - 255.2. — Questions of law or fact.
 - 255.3. — Deliberations; matters considered.
 - 255.4. — Findings, conclusions, decision, or verdict.
- 256. Holding accused to answer.
- 257. Acquittal or conviction; motions for acquittal, directed verdict, etc.
- 258. Judgment, sentence, and record; new trial.
- 259. Commitment or certificate of conviction.
- 260. Appeal and trial de novo.
 - 260.1. — In general; judgments reviewable.
 - 260.2. — Proper mode of review.
 - 260.3. — Right of review.
 - 260.4. — Jurisdiction and proceedings for review; preservation of error.
 - 260.5. — Time of taking appeal.
 - 260.6. — Bond or undertaking for appeal.
 - 260.7. — Record.
 - 260.8. — Dismissal and reinstatement.
 - 260.9. — Effect of appeal.

XIII. NONJURY OR BENCH TRIAL AND CONVICTION.(Cont'd)

- 260.10. — Assignment or presentation of errors, and briefs.
- 260.11. — Review.
 - (1). In general.
 - (2). Presumptions.
 - (3). Questions of fact.
 - (3.1). — In general.
 - (4). — Sufficiency of evidence to convict.
 - (5). — Particular cases and questions.
 - (6). Harmless error.
- 260.12. — Determination and disposition of cause.
- 260.13. — Trial de novo.

XIV. ARRAIGNMENT.

See also CONSTITUTIONAL LAW ¶4584.

- 261. Necessity of arraignment and plea.
 - (1). In general.
 - (2). Further arraignment and plea.
- 262. Waiver of arraignment and plea.
- 263. Bench warrant or other process after indictment.
- 264. Requisites and sufficiency of arraignment.
- 265. Time to plead in general.
Time of arraignment, see ¶264.
- 266. Refusal or failure to plead.

XV. PLEAS.

- 267. Pleas in general.
- 268. — In general.
- 269. — Requisites and sufficiency.
- 270. — Several pleas.
- 271. — Duplicity.
- 272. Plea of guilty.
 - 273. — In general.
 - (1). In general.
 - (2). Right to plead guilty; mental competence.
 - (3). Lesser offense, plea of guilty to.
 - (4). Requisites and proceedings for entry.
 - (4.1). — In general.
 - (5). — Entry in person or by attorney.
 - 273.1. — Voluntary character.

110. CRIMINAL LAW

XV. PLEAS.(Cont'd)

- (1). In general.
- (2). Representations, promises, or coercion; plea bargaining.
- (3). Effect of illegal detention or violation of constitutional rights; illegally acquired evidence.
- (4). Ascertainment by court; advising and informing accused.
- (5). Evidence as to voluntariness.
- 273.2. — Effect in general.
Excludes conclusiveness in habeas corpus proceedings, see HABEAS CORPUS ¶276, 318.
- (1). In general.
- (2). Conclusiveness; necessity of further proof.
- 273.3. — Matters admitted.
- 273.4. — Waiver of rights, defenses, and objections.
Appeal rights, see CRIMINAL LAW ¶1026.10(2); *right of confrontation, see CRIMINAL LAW* ¶662.80; *double jeopardy, see DOUBLE JEOPARDY* ¶202; *right to jury trial, see JURY* ¶29(4); *right to post-conviction relief, see CRIMINAL LAW* ¶1434; *habeas corpus, see also HABEAS CORPUS* ¶276, 318.
- (1). In general.
- (2). Illegal arrest, search, or seizure.
- (3). Coerced confessions.
- (4). Indictment or information, defects in.
- 274. — Withdrawal.
- (1). In general.
- (2). Discretion of court.
- (3). Grounds for allowance.
- (3.1). — In general.
- (4). — Fraud, duress, mistake, or ignorance.
- (5). — Hope of leniency.
- (6). — Mental incompetency or other incapacity.
- (7). — Lack or incompetence of counsel.
- (8). — Innocence or doubt as to guilt.
- (9). Time for application.
- (10). Effect of withdrawal.
- 275. Plea of no contest or nolo contendere.
- 275.1. — In general.
- 275.2. — Nature and effect of plea.
- 275.3. — Requisites and proceedings for entry.
- 275.4. — Voluntary character.

XV. PLEAS.(Cont'd)

- (1). In general.
- (2). Plea bargaining.
- 275.5. — Withdrawal.
- (1). In general.
- (2). Grounds.
- (3). Application or motion.
- (4). Hearing and determination.
- 276. Plea to jurisdiction.
- 277. Pleas in abatement.
- 277.1. — In general.
- 278. — Nature and necessity.
- (1). In general.
- (2). Defects and irregularities as to grand jury.
- 279. — Time and order of pleading.
- 280. — Requisites and sufficiency.
- (1). In general.
- (2). Defects and irregularities as to grand jury.
- (3). Another indictment pending.
- (4). Misnomer.
- (5). Formal requisites.
- 281. — Demurrer or motion to strike plea.
- 282. — Replication and issues.
- 283. — Evidence.
- 284. — Trial and determination.
- 285. — Judgment.
- 286. Special pleas in bar in general.
See also ¶286.5 and 286.10, below.
- 286.5. Plea of insanity or incapacity.
- (1). In general.
- (2). Necessity; issue raised without plea.
- 286.10. Plea of guilty but mentally ill.
- 287. Plea of agreement not to prosecute.
- 288. Plea of limitation.
- 289. Plea of former jeopardy or former acquittal or conviction.
- 289.1. — In general.
- 290. — Nature and necessity.
- 291. — Time and order of pleading.
- 292. — Requisites and sufficiency.
- (1). In general.
- (2). Averments as to identity of person and offense, and setting out record.
- (3). Averments of jeopardy and jurisdiction.

110. CRIMINAL LAW**XV. PLEAS.(Cont'd)**

- 293. — Demurrer to or other contest of plea.
- 294. — Replication and issues.
- 295. — Evidence.
- 296. — Trial and determination.
- 297. — Judgment.
- 298. Plea of pardon.
- 299. Plea of not guilty.
- 300. — In general.
- 301. — Withdrawal.

XVI. NOLLE PROSEQUI OR DISCONTINUANCE.

- 303.5. Dismissal, nolle prosequi, or discontinuance.
- 303.10. — In general.
Includes dismissal, etc., at the instance of the court or the prosecution. Dismissal for deficiencies in the charge, see INDICTMENT AND INFORMATION §§144-144.2, for want of evidence, see §752.5, for governmental misconduct generally, see §627.8(6), 627.10(9), 700, and 706, for governmental misconduct before the institution of the prosecution, see §36.6, and for speedy trial violations, see §577.16.
- 303.15. — Authority and discretion of court or prosecution.
- 303.20. — Stage of proceeding.
- 303.25. — Allowance as to one of two indictments, to part of a count, or to part of several counts.
- 303.30. — Grounds and considerations.
 - (1). In general.
 - (2). Interest or furtherance of justice.
 - (3). Inconsequential or de minimis infraction.
 - (4). Bargain, agreement, or conditions; adjournment pending dismissal.
 - (5). Motion or consent of victim or private prosecutor; compromise.
- 303.35. — Proceedings; dismissal with or without prejudice.
 - (1). In general.
 - (2). Motion or suggestion by defendant.
- 303.40. — Abandonment.
- 303.45. — Reinstatement.
- 303.50. Abatement.

XVII. EVIDENCE.

See also CONSTITUTIONAL LAW §3801, XXVII(H)5.

(A) JUDICIAL NOTICE.

- 304. Judicial notice.
 - (1). In general.
 - (2). Historical facts and matters of common knowledge or belief.
 - (3). Physiological facts.
 - (4). Language, words and phrases, and abbreviations.
 - (5). Geographical facts in general.
 - (6). Location, boundaries, and population of municipalities.
 - (7). Incorporation of municipality.
 - (8). Location of lots and buildings in cities.
 - (9). Public and private acts and proclamations.
 - (10). Federal departmental regulations.
 - (11). Laws of foreign states.
 - (12). Ordinances.
 - (13). Organization, sessions, and terms of courts.
 - (14). Territorial extent of jurisdiction of courts.
 - (15). Organization, sessions, and proceedings of grand jury.
 - (16). Records.
 - (17). Public officers, and acts and signatures thereof.
 - (18). Elections.
 - (19). Existence, appearance, and value of money.
 - (20). Beverages and their properties.
 - (21). Nature of certain games and terminology thereof.

(B) PRESUMPTIONS AND INFERENCES.

- 305. Presumptions.
 - 305.1. — In general.
- 306. — Application in criminal prosecutions.
- 307. — Constitutional and statutory provisions.
- 308. — Innocence.
- 309. — Character.
- 310. — Capacity in general.
- 311. — Sanity.
- 312. — Intent.
- 313. — Knowledge of law.
- 314. — Knowledge of fact.

110. CRIMINAL LAW**XVII. EVIDENCE.**(Cont'd)

- 315. — Continuance of fact.
- 316. — Failure to explain incriminating circumstances.
- 317. — Failure to testify or call witness.
- 318. — Suppression, spoliation, or fabrication of evidence.
- 319. — Failure to sustain defense.
- 320. — Laws of other states or countries.
- 321. — Judicial proceedings.
- 322. — Official acts.
- 323. — Particular facts.
- 324. — Operation and effect.
- 325. — Conflicting presumptions.

(C) BURDEN OF PROOF.

- 326. Burden of proof.
- 326.1. — In general.
- 327. — Extent of burden on prosecution.
- 328. — Elements of offense in general.
- 329. — Matters excepted in statute defining offense.
- 330. — Matters of defense and rebuttal in general.
- 331. — Insanity.
- 332. — Intoxication.
- 333. — Alibi.
- 334. — Matters preliminary to introduction of other evidence.
- 335. — Particular facts.
- 336. — Failure to sustain burden.

(D) FACTS IN ISSUE AND RELEVANCE.

See also CONSTITUTIONAL LAW ¶4564-4671.

- 337. Facts in issue.
- 338. Relevancy in general.
 - (1). In general.
 - (2). Admissibility of circumstantial evidence.
 - (3). Evidence relevant in connection with offer of proof or evidence already introduced.
 - (4). Evidence as to acts, transactions, and occurrences to which accused is not a party.
 - (6). Evidence for purpose of testing, sustaining, or impeaching credibility or character of witnesses and others.

XVII. EVIDENCE.(Cont'd)

- (7). Evidence calculated to create prejudice against or sympathy for accused.
- (8). Evidence calculated to create prejudice against witness.
- 339. Identity of persons or things.
- 339.5. Identity of accused.

Extrajudicial identification and its effect as hearsay, see ¶421(6); *declarations by persons injured, see* ¶415(4); *corroboration of witnesses, see WITNESSES.*
- 339.6. — In general.
- 339.7. — Photographs and drawings.
 - (1). In general.
 - (2). Defendant in custody; counsel.
 - (3). Manner of exhibition; suggestiveness.
 - (4). Number and character of pictures.
- 339.8. — Out-of-court or pre-trial confrontation.
 - (1). In general; lineup, showup or other confrontation.
 - (2). Time and manner of confrontation; suggestiveness.
 - (2.1). — In general.
 - (3). — Lineup procedure in general.
 - (4). — Number, character, and appearance of lineup participants.
 - (5). — Necessity of lineup; single suspect showup in general.
 - (6). — Confrontations at the scene or shortly after offense or arrest.
 - (7). Assistance of counsel; advice and warnings.
- 339.9. — In-court identification in general.
 - (1). In general.
 - (2). Opportunity for observation; certainty and positiveness.
 - (3). Prior failure, uncertainty, or mistake by witness.
- 339.10. — Effect of prior events on subsequent identification.
 - (1). Prior impropriety in general.
 - (2). Photographs and drawings.
 - (3). Prior confrontation in general.
 - (4). Absence of counsel, advice or warnings.
 - (5). Illegal arrest, detention, or search.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- (6). Independent basis; opportunity for observation.
- (6.1). — In general.
- (7). — Particular cases.
- (8). — Homicide, assault, and kidnapping.
- (9). — Robbery.
- (10). — Sex offenses.
- (11). — Other particular offenses.
- 339.11. — Determination of admissibility.
 - (1). In general.
 - (2). Hearing, necessity and conduct; findings.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (5.1). — In general.
 - (6). — Particular cases.
 - (7). — Homicide, assault, and kidnapping.
 - (8). — Robbery.
 - (9). — Sex offenses.
 - (10). — Other particular offenses.
- 340. Nature and condition of property or other subject-matter of offense.
- 341. Personal relations.
- 342. Motive or absence of motive.
- 343. Threats and expressions of ill will.
- 344. Ability and opportunity.
- 345. Preparations and preceding circumstances.
- 346. Place or time of criminal act.
- 347. Nature of criminal act and attendant circumstances.
- 348. Means of committing offense and articles connected therewith.
- 349. Subsequent incriminating or exculpatory circumstances.
- 350. Subsequent condition or conduct of person injured.
- 351. Subsequent condition or conduct of accused.
 - (1). In general.
 - (2). Conduct and declarations at time of arrest.
 - (3). Flight or refusal to flee.
 - (4). Resisting or avoiding arrest.

XVII. EVIDENCE.(Cont'd)

- (5). Concealment of identity.
- (6). Attempt to commit suicide.
- (7). Silence after knowledge or commission of crime.
- (8). Subornation of witnesses or jurors, and fabrication of evidence.
- (9). Escape, attempts to escape, and opportunity to escape declined.
- (10). Suppression or destruction of evidence, or misrepresentations to avoid suspicion or cast it upon another.
- 354. Insanity.
- 355. Intoxication.
- 356. Excuse or justification.
- 358. Alibi.
- 359. Incriminating others.
- 360. Matters showing relevancy of other facts.
- 361. Matters explanatory of facts in evidence or of inferences therefrom.
 - (1). In general.
 - (2). Insanity.
 - (3). Condition or conduct of accused subsequent to commission of crime.
 - (4). Confessions, admissions, statements, and declarations.
- (E) RES GESTAE.
- 362. Res gestae; excited utterances.
- 363. — In general.
- 364. — Acts and statements of accused.
 - (5). In general.
 - (1). Contemporaneous with commission of crime.
 - (2). Before commission of crime.
 - (3). After commission of crime.
 - (3.1). — In general.
 - (4). — Incriminating conduct and statements after commission of offense.
 - (5). — Exculpatory conduct and statements after commission of offense.
 - (6). Length of time elapsed as affecting admissibility.
 - (7). Explaining possession of stolen property.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

365. — Other offenses part of same transaction.
 (1). In general.
 (2). Prior offenses.
 (3). Subsequent offenses.
366. — Acts and statements of person injured.
 (1). In general.
 (2). Before commission of crime.
 (3). Subsequent to commission of crime in general.
 (4). Incriminating accused.
 (5). Exculpating accused.
 (6). Length of time elapsed as affecting admissibility.
 (7). Incompetency of person injured to testify as affecting admissibility.
367. — Statements as to and expressions of personal injury or suffering.
368. — Acts and statements of third persons.
 (1). In general.
 (2). Before commission of crime.
 (3). Subsequent to commission of crime.

(F) OTHER MISCONDUCT BY ACCUSED.

See also CONSTITUTIONAL LAW §4669.

1. OTHER MISCONDUCT AS EVIDENCE OF OFFENSE CHARGED IN GENERAL.

- 368.1. In general.
 368.2. Discretion of court in general.
 368.3. Purposes for admitting evidence of other misconduct.
 368.4. — In general.
 368.5. — Showing bad character or criminal propensity in general.
 368.6. — Connecting accused with crime charged in general.
 368.7. Factors affecting admissibility.
 368.8. — In general.
 368.9. — Relevancy.
 368.10. — Materiality.
 368.11. — Competency.
 368.12. — Logical connection to crime charged.
 368.13. — Prejudicial effect and probative value.

XVII. EVIDENCE.(Cont'd)

- 368.14. — Tendency to mislead, confuse, distract, or waste time.
 368.15. — Necessity for evidence.

2. ADMISSIBILITY IN PROSECUTIONS FOR PARTICULAR OFFENSES IN GENERAL.

- 368.16. In general.
 368.17. Arson and malicious mischief.
 368.18. Assault and battery.
 368.19. Burglary and trespass.
 368.20. Conspiracy, racketeering, and money laundering.
 368.21. Controlled substances.
 368.22. Counterfeiting and forgery.
 368.23. Disorderly conduct and breach of the peace.
 368.24. Escape.
 368.25. Extortion, threats, stalking, and harassment.
 368.26. False pretenses and fraud.
 368.27. Gambling offenses.
 368.28. Homicide, mayhem, and assault with intent to kill.
 368.29. Infants and endangered persons, offenses specific to.
 368.30. Kidnapping and false imprisonment.
 368.31. Larceny, embezzlement, and receiving stolen property.
 368.32. Liquor offenses.
 368.33. Motor vehicle offenses.
 368.34. Obscenity and lewdness.
 368.35. Obstructing justice, bribery, and perjury.
 368.36. Robbery.
 368.37. Sex offenses, incest, and prostitution.
 368.38. Tax and internal revenue offenses.
 368.39. Weapons and explosives.
 368.40. Other particular offenses.
 368.41. Multiple offenses.

3. OTHER MISCONDUCT INADMISSIBLE UNDER ANY OF SEVERAL THEORIES.

- 368.42. In general.
 368.43. Arson and malicious mischief.
 368.44. Assault and battery.
 368.45. Burglary and trespass.
 368.46. Conspiracy, racketeering, and money laundering.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 368.47. Controlled substances.
- 368.48. Counterfeiting and forgery.
- 368.49. Disorderly conduct and breach of the peace.
- 368.50. Escape.
- 368.51. Extortion, threats, stalking, and harassment.
- 368.52. False pretenses and fraud.
- 368.53. Gambling offenses.
- 368.54. Homicide, mayhem, and assault with intent to kill.
- 368.55. Infants and endangered persons, offenses specific to.
- 368.56. Kidnapping and false imprisonment.
- 368.57. Larceny, embezzlement, and receiving stolen property.
- 368.58. Liquor offenses.
- 368.59. Motor vehicle offenses.
- 368.60. Obscenity and lewdness.
- 368.61. Obstructing justice, bribery, and perjury.
- 368.62. Robbery.
- 368.63. Sex offenses, incest, and prostitution.
- 368.64. Tax and internal revenue offenses.
- 368.65. Weapons and explosives.
- 368.66. Other particular offenses.
- 368.67. Multiple offenses.

4. OTHER MISCONDUCT INSEPARABLE FROM CRIME CHARGED.

- 368.68. In general.
- 368.69. Interwoven occurrences in general.
- 368.70. Same transaction in general.
- 368.71. Res gestae in general.
- 368.72. Completing the narrative in general.
- 368.73. Conduct affecting grade or degree of crime charged in general.
- 368.74. Arson and malicious mischief.
- 368.75. Assault and battery.
- 368.76. Burglary and trespass.
- 368.77. Conspiracy, racketeering, and money laundering.
- 368.78. Controlled substances.
- 368.79. Counterfeiting and forgery.
- 368.80. Disorderly conduct and breach of the peace.
- 368.81. Escape.
- 368.82. Extortion, threats, stalking, and harassment.

XVII. EVIDENCE.(Cont'd)

- 368.83. False pretenses and fraud.
- 368.84. Gambling offenses.
- 368.85. Homicide, mayhem, and assault with intent to kill.
- 368.86. Infants and endangered persons, offenses specific to.
- 368.87. Kidnapping and false imprisonment.
- 368.88. Larceny, embezzlement, and receiving stolen property.
- 368.89. Liquor offenses.
- 368.90. Motor vehicle offenses.
- 368.91. Obscenity and lewdness.
- 368.92. Obstructing justice, bribery, and perjury.
- 368.93. Robbery.
- 368.94. Sex offenses, incest, and prostitution.
- 368.95. Tax and internal revenue offenses.
- 368.96. Weapons and explosives.
- 368.97. Other particular offenses.
- 368.98. Multiple offenses.

5. OTHER MISCONDUCT PART OF PLAN EMBRACING MORE THAN ONE ACT.

- 370.1. In general.
- 370.2. Plan or scheme in general.
- 370.3. System in general.
- 370.4. Continuing offenses in general.
- 370.5. Arson and malicious mischief.
- 370.6. Assault and battery.
- 370.7. Burglary and trespass.
- 370.8. Conspiracy, racketeering, and money laundering.
- 370.9. Controlled substances.
- 370.10. Counterfeiting and forgery.
- 370.11. Disorderly conduct and breach of the peace.
- 370.12. Escape.
- 370.13. Extortion, threats, stalking, and harassment.
- 370.14. False pretenses and fraud.
- 370.15. Gambling offenses.
- 370.16. Homicide, mayhem, and assault with intent to kill.
- 370.17. Infants and endangered persons, offenses specific to.
- 370.18. Kidnapping and false imprisonment.
- 370.19. Larceny, embezzlement, and receiving stolen property.

110. CRIMINAL LAW**XVII. EVIDENCE:(Cont'd)**

- 370.20. Liquor offenses.
- 370.21. Motor vehicle offenses.
- 370.22. Obscenity and lewdness.
- 370.23. Obstructing justice, bribery, and perjury.
- 370.24. Robbery.
- 370.25. Sex offenses, incest, and prostitution.
- 370.26. Tax and internal revenue offenses.
- 370.27. Weapons and explosives.
- 370.28. Other particular offenses.
- 370.29. Multiple offenses.

6. OTHER MISCONDUCT SHOWING MOTIVE.

- 371.1. In general.
- 371.2. Arson and malicious mischief.
- 371.3. Assault and battery.
- 371.4. Burglary and trespass.
- 371.5. Conspiracy, racketeering, and money laundering.
- 371.6. Controlled substances.
- 371.7. Counterfeiting and forgery.
- 371.8. Disorderly conduct and breach of the peace.
- 371.9. Escape.
- 371.10. Extortion, threats, stalking, and harassment.
- 371.11. False pretenses and fraud.
- 371.12. Gambling offenses.
- 371.13. Homicide, mayhem, and assault with intent to kill.
- 371.14. Infants and endangered persons, offenses specific to.
- 371.15. Kidnapping and false imprisonment.
- 371.16. Larceny, embezzlement, and receiving stolen property.
- 371.17. Liquor offenses.
- 371.18. Motor vehicle offenses.
- 371.19. Obscenity and lewdness.
- 371.20. Obstructing justice, bribery, and perjury.
- 371.21. Robbery.
- 371.22. Sex offenses, incest, and prostitution.
- 371.23. Tax and internal revenue offenses.
- 371.24. Weapons and explosives.
- 371.25. Other particular offenses.
- 371.26. Multiple offenses.

7. OTHER MISCONDUCT SHOWING INTENT.

- 371.27. In general.
- 371.28. Necessity that intent be in issue.
- 371.29. Arson and malicious mischief.
- 371.30. Assault and battery.
- 371.31. Burglary and trespass.
- 371.32. Conspiracy, racketeering, and money laundering.
- 371.33. Controlled substances.
- 371.34. Counterfeiting and forgery.
- 371.35. Disorderly conduct and breach of the peace.
- 371.36. Escape.
- 371.37. Extortion, threats, stalking, and harassment.
- 371.38. False pretenses and fraud.
- 371.39. Gambling offenses.
- 371.40. Homicide, mayhem, and assault with intent to kill.
- 371.41. Infants and endangered persons, offenses specific to.
- 371.42. Kidnapping and false imprisonment.
- 371.43. Larceny, embezzlement, and receiving stolen property.
- 371.44. Liquor offenses.
- 371.45. Motor vehicle offenses.
- 371.46. Obscenity and lewdness.
- 371.47. Obstructing justice, bribery, and perjury.
- 371.48. Robbery.
- 371.49. Sex offenses, incest, and prostitution.
- 371.50. Tax and internal revenue offenses.
- 371.51. Weapons and explosives.
- 371.52. Other particular offenses.
- 371.53. Multiple offenses.

8. OTHER MISCONDUCT SHOWING KNOWLEDGE.

- 371.54. In general.
- 371.55. Arson and malicious mischief.
- 371.56. Assault and battery.
- 371.57. Burglary and trespass.
- 371.58. Conspiracy, racketeering, and money laundering.
- 371.59. Controlled substances.
- 371.60. Counterfeiting and forgery.
- 371.61. Disorderly conduct and breach of the peace.
- 371.62. Escape.
- 371.63. Extortion, threats, stalking, and harassment.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 371.64. False pretenses and fraud.
- 371.65. Gambling offenses.
- 371.66. Homicide, mayhem, and assault with intent to kill.
- 371.67. Infants and endangered persons, offenses specific to.
- 371.68. Kidnapping and false imprisonment.
- 371.69. Larceny, embezzlement, and receiving stolen property.
- 371.70. Liquor offenses.
- 371.71. Motor vehicle offenses.
- 371.72. Obscenity and lewdness.
- 371.73. Obstructing justice, bribery, and perjury.
- 371.74. Robbery.
- 371.75. Sex offenses, incest, and prostitution.
- 371.76. Tax and internal revenue offenses.
- 371.77. Weapons and explosives.
- 371.78. Other particular offenses.
- 371.79. Multiple offenses.

9. OTHER MISCONDUCT SHOWING ABSENCE OF MISTAKE OR ACCIDENT.

- 372.1. In general.
- 372.2. Necessity that mistake or accident be in issue.
- 372.3. Arson and malicious mischief.
- 372.4. Assault and battery.
- 372.5. Burglary and trespass.
- 372.6. Conspiracy, racketeering, and money laundering.
- 372.7. Controlled substances.
- 372.8. Counterfeiting and forgery.
- 372.9. Disorderly conduct and breach of the peace.
- 372.10. Escape.
- 372.11. Extortion, threats, stalking, and harassment.
- 372.12. False pretenses and fraud.
- 372.13. Gambling offenses.
- 372.14. Homicide, mayhem, and assault with intent to kill.
- 372.15. Infants and endangered persons, offenses specific to.
- 372.16. Kidnapping and false imprisonment.
- 372.17. Larceny, embezzlement, and receiving stolen property.
- 372.18. Liquor offenses.
- 372.19. Motor vehicle offenses.

XVII. EVIDENCE.(Cont'd)

- 372.20. Obscenity and lewdness.
- 372.21. Obstructing justice, bribery, and perjury.
- 372.22. Robbery.
- 372.23. Sex offenses, incest, and prostitution.
- 372.24. Tax and internal revenue offenses.
- 372.25. Weapons and explosives.
- 372.26. Other particular offenses.
- 372.27. Multiple offenses.

10. OTHER MISCONDUCT SHOWING IDENTITY.

- 372.28. In general.
- 372.29. Arson and malicious mischief.
- 372.30. Assault and battery.
- 372.31. Burglary and trespass.
- 372.32. Conspiracy, racketeering, and money laundering.
- 372.33. Controlled substances.
- 372.34. Counterfeiting and forgery.
- 372.35. Disorderly conduct and breach of the peace.
- 372.36. Escape.
- 372.37. Extortion, threats, stalking, and harassment.
- 372.38. False pretenses and fraud.
- 372.39. Gambling offenses.
- 372.40. Homicide, mayhem, and assault with intent to kill.
- 372.41. Infants and endangered persons, offenses specific to.
- 372.42. Kidnapping and false imprisonment.
- 372.43. Larceny, embezzlement, and receiving stolen property.
- 372.44. Liquor offenses.
- 372.45. Motor vehicle offenses.
- 372.46. Obscenity and lewdness.
- 372.47. Obstructing justice, bribery, and perjury.
- 372.48. Robbery.
- 372.49. Sex offenses, incest, and prostitution.
- 372.50. Tax and internal revenue offenses.
- 372.51. Weapons and explosives.
- 372.52. Other particular offenses.
- 372.53. Multiple offenses.

11. OTHER PARTICULAR THEORIES OF ADMISSIBILITY.

- 372.54. In general.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 372.55. Showing background; explaining matters in evidence.
- 372.56. Controverting defense evidence or theory.
- 372.57. Mental capacity.
- 372.58. Showing opportunity.
- 372.59. Showing relationship between defendant and others.
- 372.60. Explaining conduct of officers, investigators, and other officials.
- 372.61. Explaining conduct of victims and witnesses.

12. NATURE AND CIRCUMSTANCES OF OTHER MISCONDUCT AFFECTING ADMISSIBILITY.

- 373.1. In general.
- 373.2. What constitutes other misconduct.
- 373.3. Conduct not amounting to crime, or evidence merely suggestive of crime.
- 373.4. — In general.
- 373.5. — Gang membership.
- 373.6. — Juvenile misconduct.
- 373.7. Similarity to crime charged.
- 373.8. — In general.
- 373.9. — Controlled substance offenses.
- 373.10. — Sex offenses.
- 373.11. — Weapons offenses.
- 373.12. — Other particular offenses.
- 373.13. — Similar victims.
- 373.14. — Same or identical victims.
- 373.15. — Similar means or method; modus operandi.
- 373.16. — Attempts.
- 373.17. Geographic proximity.
- 373.18. Temporal relation of events.
- 373.19. — In general.
- 373.20. — Close temporal proximity.
- 373.21. — Remoteness.
- 373.22. — Misconduct subsequent to charged offense.
- 373.23. Conduct barred from prosecution by limitations.
- 373.24. — In general.
- 373.25. — Continuing offenses.
- 373.26. Number of other acts.
- 373.27. Subsequent circumstances.
- 373.28. — In general.
- 373.29. — Acquittal.

XVII. EVIDENCE.(Cont'd)

373.30. — Dismissal or mistrial.

373.31. — Reversal.

13. PROOF AND EFFECT.

- 374.1. In general.
- 374.2. Notice and disclosure.
- 374.3. — In general.
- 374.4. — Necessity.
- 374.5. — Request or demand for notice, necessity and sufficiency.
- 374.6. — Sufficiency of notice; time for giving.
- 374.7. — Failure to give notice.
- 374.8. — Excuses.
- 374.9. — Sanctions.
- 374.10. Objections and motions.
- 374.11. — In general.
- 374.12. — Time.
- 374.13. — Form and sufficiency.
- 374.14. — Effect of failure to object.
- 374.15. Preliminary evidence.
- 374.16. — In general.
- 374.17. — Burden of proof.
- 374.18. — Offer of proof.
 - (1). In general.
 - (2). Identifying purpose for which evidence is offered.
- 374.19. — Proof of other misconduct.
 - (1). In general; necessity.
 - (2). Degree of proof.
 - (3). Sufficiency.
- 374.20. — Proof of defendant's commission of or connection with other misconduct.
 - (1). In general; necessity.
 - (2). Degree of proof.
 - (3). Sufficiency.
- 374.21. Determination of admissibility.
- 374.22. — In general.
- 374.23. — Hearing.
- 374.24. — Findings and statement of reasons.
- 374.25. — Decision or order.
- 374.26. Manner of proving other misconduct.
- 374.27. Order of proof.
- 374.28. — In general.
- 374.29. — Rebuttal.

110. CRIMINAL LAW**XVII. EVIDENCE.**(Cont'd)

374.30. Effect of admitting or excluding evidence.

374.31. — In general.

374.32. — Right of accused to present evidence in response.

(G) CHARACTER OF ACCUSED.

375. Character or reputation of accused.

376. — In general.

377. — Good character as evidence for defense.

378. — Rebuttal of evidence of good character.

379. — General reputation.

380. — Particular acts.

381. — Weight and effect of evidence.

(H) MATERIALITY.

See also CONSTITUTIONAL LAW ¶4654-4671.

382. Materiality in general.

383. Importance or certainty of evidence.

384. Remoteness of evidence.

(I) COMPETENCY IN GENERAL.

385. Competency in general.

386. Nature and source of evidence.

387. Negative testimony.

388. Experiments and tests; scientific and survey evidence.

Excludes sobriety tests administered to motorists, see AUTOMOBILES ¶411-426; *scientific evidence as basis for experts' opinions, see CRIMINAL LAW* ¶488; *and use of statistical studies in particular pretrial proceedings, see CRIMINAL LAW* ¶134 *for use in change of venue proceedings and JURY* ¶33 *for use in jury selection proceedings.*

388.1. — In general.

388.2. — Particular tests or experiments.

388.3. — Foundation or authentication in general.

388.4. — Speed; radar.

(1). In general.

(2). Competency of technician or witness.

(3). Reliability of particular testing devices.

388.5. — Lie detector or polygraph tests and procedures.

Excludes right to be tested or to compel testing of others, see CRIMINAL LAW ¶627.1; *impeachment with evidence of unwillingness to submit to testing, see WITNESSES* ¶344(1); *and corroboration with evi-*

dence of willingness to submit to testing, see WITNESSES ¶318 and 414(1).

(1). In general.

(2). Stipulations or agreements.

(3). — In general.

(4). — Necessity and effect.

(5). — Validity.

(6). — Form and requisites.

(7). — Construction.

(8). — Compliance with terms.

(9). — Withdrawal.

(10). Conclusiveness of results, admissibility dependent upon.

(11). Test procedures; competency of technician.

(12). Willingness of defendant to submit to test.

(13). Fact of taking test.

388.10. — Drug or truth serum tests.

389. Evidence not presented to grand jury.

390. Testimony as to intent or motive.

391. Excuse for failure of accused to testify.

392. Excuse for failure to call witness or produce evidence.

392.1. Wrongfully obtained evidence.

392.2. — In general.

392.3. — Irrelevance of acquisition by improper means.

(1). In general.

(2). Searches, seizures, and arrests.

392.4. — Exclusionary rule in general.

(1). In general.

(2). Searches, seizures, and arrests.

392.5. — Purpose of exclusionary rule.

(1). In general.

(2). Searches, seizures, and arrests.

392.6. — Exclusionary rule as a personal or individual right.

392.7. — State or federal law.

392.8. — Foreign law.

392.9. — Nature of misconduct warranting suppression in general.

392.10. — Necessity of constitutional violation in general.

(1). In general.

(2). Searches, seizures, and arrests.

392.11. — Evidence obtained in violation of statute or treaty in general.

392.12. — Evidence obtained in violation of rules or regulations in general.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 392.13. — Persons procuring or providing evidence.
- (1). In general.
 - (2). Private persons; necessity of state action.
 - (3). Informants; agents of police or prosecution.
 - (4). Evidence procured by foreign agents.
 - (5). Evidence procured by federal agents, in state prosecutions.
 - (6). Evidence procured by state or territorial agents, in federal prosecutions.
 - (7). Joint venture doctrine; agency.
 - (8). Cooperation among units of same government.
 - (9). Evidence obtained by parties in civil proceedings.
- 392.14. — Searches and seizures in general.
- 392.15. — Search or seizure without warrant in general.
- (1). In general.
 - (2). Probable cause for search without warrant.
 - (3). Plain view in general.
 - (4). Particular places or things searched or seized without warrant.
 - (5). — In general.
 - (6). — Search of home or residence.
 - (7). — Hotel, motel, or other temporary residence.
 - (8). — Place of business or other premises.
 - (9). — Vehicles, boats, planes.
 - (10). — Inventory searches.
 - (11). — Persons; identity.
 - (12). — Other particular places or things.
 - (13). — Abandoned property.
- 392.16. — Search or seizure under warrant.
- (1). In general.
 - (2). Affidavit or complaint; probable cause.
 - (3). Form and requisites of warrant.

XVII. EVIDENCE.(Cont'd)

- (4). Neutral and detached official issuing warrant.
 - (5). Execution and return of warrant.
 - (6). Knock and announce requirement.
 - (7). Federal-state warrant issues.
- 392.17. — Stop or arrest.
- (1). In general.
 - (2). Search or seizure following arrest in general.
 - (3). Search or seizure following investigatory stop.
 - (4). Arrest under warrant.
 - (5). — In general.
 - (6). — Execution.
- 392.18. — Knock or announcement prior to entry or search.
- 392.19. — Delay in arraignment, hearing, or presentment to magistrate.
- 392.20. — Denial of timely telephone call or other communication following arrest.
- 392.21. — Electronic surveillance; telecommunications.
- 392.22. — Violations of right to counsel.
- 392.23. — Traffic regulation; speed traps, roadblocks, vehicular markings, and uniforms.
- 392.24. — Violation of privilege.
- 392.25. — Equal protection and due process violations.
- 392.26. — Privacy in general.
- 392.27. — Health, tax, or financial records.
- 392.28. — Subpoenas, violation of sealing order.
- 392.29. — Perjury by police or agents of prosecution.
- 392.30. — Posse comitatus violations.
- 392.31. — Particular treaties or conventions.
- 392.32. — Miscellaneous government misconduct or mischief in procurement of evidence in general.
- (1). In general.
 - (2). Attorney discipline rule violation or other misconduct.
 - (3). Delay.
 - (4). Trespass, spying, eavesdropping, or deceit.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- (5). Entrapment.
- (6). Violence or coercion.
- (7). Violation of particular statutes.
- (8). Improper government agency investigative methods.
- 392.33. — Proceeding unrelated to misconduct or investigation.
- 392.34. — Subsequent illegality; admissibility of evidence whose acquisition is initially proper.
- 392.35. — Return of property; adversary hearing for obscene material.
- 392.36. — Invocation of exclusionary rule protection by alleged perjurer.
- 392.37. — Operation and extent of, and exceptions to, the exclusionary rule in general.
- 392.38. — Good faith or objectively reasonable conduct doctrine.
 - (1). In general.
 - (2). Applicability when no warrant sought or yet obtained.
 - (3). Necessity of significant investigation and review by trained person.
 - (4). Reliance on statute, ordinance, or precedent; mistake of law.
 - (5). Apparent authority in general.
 - (6). Exceptions relating to defects in warrant.
 - (7). — In general.
 - (8). — Deliberately or recklessly false affidavit.
 - (9). — Abandonment of judicial role or lack of neutrality.
 - (10). — Lack of indicia of probable cause; “bare bones” affidavits.
 - (11). — Lack of particularity as to place or object.
 - (12). — Particular cases.
 - (13). Applicability when police or warrant violate rule or statute.
 - (14). Arrests and stops.
 - (15). Electronic surveillance cases.
- 392.39. — Extent of exclusion; “fruit of the poisonous tree”.
 - (1). In general.
 - (2). Search or seizure in general.
 - (3). Search under warrant.

XVII. EVIDENCE.(Cont'd)

- (4). Electronic eavesdropping.
- (5). Investigatory stop, and search or seizure thereafter.
- (6). Arrest, and search or seizure thereafter.
- (7). Arrest under warrant, and search or seizure thereafter.
- (8). Exceptions.
- (9). — In general; multiple factors.
- (10). — Attenuation or dissipation purging taint.
- (11). — Causal nexus; independent discovery or basis or source.
- (12). — Inevitable discovery.
- 392.40. — Objections to admission of evidence.
- 392.41. — Persons entitled to object.
- 392.42. — Waiver of objections by conduct at time near alleged impropriety.
 - (1). In general.
 - (2). Consent.
 - (3). — In general.
 - (4). — Necessity of warning to obtain valid consent.
 - (5). — Consent by person other than the accused.
 - (6). — Validity of consent in light of prior misconduct.
- 392.43. — Proceedings in general.
- 392.44. — Discretion and power of trial court.
- 392.45. — Notice of intent to seek to suppress evidence.
- 392.46. — Motions.
 - (1). In general.
 - (2). Adequacy; waiver by failure to include issue in motion.
 - (3). Time for filing; waiver for failing to file or to timely file.
 - (4). Motion papers, affidavits; sworn statements.
 - (5). Necessity of renewal of motion at trial; necessity of objection at trial.
- 392.47. — Response or answer to motion.
 - (1). In general.
 - (2). Duty to respond vel non.
 - (3). Waiver by prosecution; failure to respond or to timely respond.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 392.48. — Production of search warrant by prosecution.
- 392.49. — Evidence on motions.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
 - (4). — In general.
 - (5). — Consent.
 - (6). — Abandonment.
 - (7). — Warrant requirements; probable cause.
 - (8). — Good faith.
 - (9). — Wiretaps; electronic surveillance.
 - (10). Degree of proof.
- 392.50. — Right to, and necessity of, hearing or voir dire examination; summary disposition.
- 392.51. — Conduct of hearing in general.
- 392.52. — Time for hearing; continuance.
- 392.53. — Advising accused as to his rights.
- 392.54. — Trial judge as sole arbiter of credibility.
- 392.55. — Questions of law or fact.
- 392.56. — Determinative process; matters or issues considered.
- 392.57. — Deference to judicial officer issuing warrant; conclusiveness of warrant.
- 392.58. — Findings and conclusions.
 - (1). In general.
 - (2). Necessity.
 - (3). Sufficiency, consistency.
- 392.59. — Order; determination.
- 392.60. — Time for making findings or order.
- 392.61. — Remedy of partial suppression.
- 392.62. — Rehearing or reopening.
- 392.63. — Operation and effect of determination.
- 393. Compelling self-incrimination.
 - (1). In general.
 - (2). Introduction of articles taken from accused.
 - (3). Exposing accused or person of accused to view of witness or jury,

XVII. EVIDENCE.(Cont'd)

- and compelling submission to physical examination.
- (4). Comparison of accused's shoes with footprints at scene of offense.
- 396. Evidence admissible by reason of admission of similar evidence of adverse party.
 - (1). In general.
 - (2). Admission of whole conversation, transaction, or instrument because of admission of part or reference thereto.
- 397. Evidence inadmissible by reason of exclusion of similar evidence of adverse party.
- (J) BEST AND SECONDARY EVIDENCE.**
- 398. Necessity and admissibility of best evidence in criminal prosecutions.
 - (1). In general.
 - (2). Admissibility of secondary evidence.
- 399. Record or other writing as best evidence.
- 400. — In general.
 - (1). In general.
 - (2). Judicial acts, proceedings, and records.
 - (3). Official acts, proceedings, and records.
 - (4). Unofficial records in general.
 - (5). Family records.
 - (6). Corporate acts, proceedings, and records.
 - (7). Conveyances, contracts, and other instruments.
 - (8). Books of account.
 - (9). Private memoranda and statements.
 - (10). Letters, telegrams, and other correspondence.
 - (11). Inscriptions, labels, names, and marks.
- 401. — Writings collateral to issues.
- 402. Preliminaries to admission of secondary evidence.
 - (1). In general.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- (2). Notice to opposite party to produce original instrument.

403. Character of secondary evidence.**(K) DEMONSTRATIVE EVIDENCE.**

Excludes experiments and tests in court, see ¶650, post. Issues concerning the exhibition to jury of articles, etc., not introduced, see ¶663, post. Many cases in this subdivision were formerly classified at ¶404(1-5).

- 404.5. In general.
 404.10. Foundation or authentication.
 404.11. — In general.
 404.15. — Identification of object.
 404.20. — Condition; change; tampering.
 404.25. — Connection with crime or party.
 404.30. — Chain of custody.
 404.35. Particular objects.
 404.36. — In general.
 404.40. — Objects used for identification.
 404.45. — Exhibition of person or body parts; samples.
 404.50. — Instruments or devices used, or suspected of use, in commission of crime.
 404.55. — Articles subject of offenses.
 404.60. — Drugs or narcotics and related objects.
 404.65. — Weapons and related objects.
 404.70. — Clothing.
 404.75. — Stolen goods.
 404.80. — Replicas and models; objects similar to or illustrative of others.
 404.85. — Writings submitted for comparison.

(L) STATEMENTS, CONFESSIONS, AND ADMISSIONS IN GENERAL.

See also CONSTITUTIONAL LAW ¶4661.

- 405.1. In general.
 405.2. What constitutes an admission.
 405.3. What constitutes a confession.
 405.4. Admissions by party opponent.
 405.5. Adoptive admissions; silence.
 405.6. Admissions by agents or representatives.
 405.7. — In general.
 405.8. — Prosecution.
 405.9. Statements by victim.
 405.10. — In general.
 405.11. — Statements against interest.

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- 405.12. — Substantive use of statements corroborating or impeaching testimony.
 405.13. — Admissibility as affected by presence or nonpresence of accused.
 405.14. Statements by third parties.
 405.15. — In general.
 405.16. — Voluntariness.
 405.17. — Effect of prior illegality.
 405.18. — Statements against interest.
 (1). In general.
 (2). Particular cases.
 405.19. — Substantive use of statements corroborating or impeaching testimony.
 405.20. — Statements as to pedigree, birth, and relationship.
 405.21. — Statements by persons engaged in investigating or prosecuting offense.
 405.22. — Admissibility as affected by presence or nonpresence of accused.
 405.23. Statements under hypnosis or influence of drugs.

(M) STATEMENTS, CONFESSIONS, AND ADMISSIONS BY OR ON BEHALF OF ACCUSED.**1. IN GENERAL.**

- 410.1. In general.
 410.2. What constitutes an admission.
 410.3. What constitutes a confession.
 410.4. What constitutes a statement or declaration.
 410.5. Admissibility in general.
 410.6. — In general.
 410.7. — Consciousness of guilt.
 410.8. — Particular cases.

2. HEARSAY.

- 410.10. In general.
 410.11. Admissions by party opponent.
 410.12. — In general.
 410.13. — Particular cases.
 410.14. Statements against interest.
 410.15. — In general.
 410.16. — Particular cases.

110. CRIMINAL LAW**3. JUDICIAL ADMISSIONS AND CONFESSIONS.**

- 410.20. In general.
- 410.21. Judicial admissions.
- 410.22. — In general.
- 410.23. — Plea of guilty or nolo contendere.
- 410.24. — In civil proceedings.
- 410.25. Judicial confessions.

4. ADOPTIVE ADMISSIONS; SILENCE.

- 410.30. In general.
- 410.31. Conduct in general.
- 410.32. Silence.
- 410.33. — In general.
- 410.34. — Coconspirators' statements.
- 410.35. — Opportunity for or necessity of responding.
- 410.36. — Post-arrest silence; custody.

5. ADMISSIONS BY AGENTS OR REPRESENTATIVES.

- 410.40. In general.
- 410.41. Counsel for accused.

6. NEGOTIATIONS FOR COMPROMISE.

- 410.45. In general.
- 410.46. Plea negotiations and offers to plead guilty.
- 410.47. — In general.
- 410.48. — Persons to whom made.
- 410.49. — Particular cases.
- 410.50. Offers to compromise with victim; civil settlements.

7. RECORDING, NECESSITY OF.

- 410.55. In general.

8. MISCELLANEOUS TYPES OF STATEMENTS.

- 410.60. In general.
- 410.61. Written statement, confession, or admission.
- 410.62. — In general.
- 410.63. — Necessity.
- 410.64. — Sufficiency.
- 410.65. — Signature.
- 410.66. — Translation.
- 410.67. Statements asserting constitutional rights.
- 410.68. Statements constituting offense.
- 410.69. Self-serving statements.

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- 410.70. — In general.
- 410.71. — Particular cases.

9. VOLUNTARINESS IN GENERAL.

- 410.75. In general.
- 410.76. Necessity of showing voluntary character.
- 410.77. What constitutes voluntary statement, admission, or confession.
- 410.78. Particular cases.
- 410.79. Physical condition.
- 410.80. — In general.
- 410.81. — Restraints.
- 410.82. — Sleep deprivation.
- 410.83. — Lack of food or beverages.
- 410.84. Mental incapacity.
- 410.85. — In general.
- 410.86. — Particular cases.
- 410.87. Intoxication.
- 410.88. — In general.
- 410.89. — Particular cases.
- 410.90. Age.
- 410.91. Education.
- 410.92. Experience with legal system.
- 410.93. Knowledge of language; translation.

10. WARNINGS.

- 411.1. In general.
- 411.2. Purpose.
- 411.3. Necessity in general.
- 411.4. Custodial interrogation in general.
- 411.5. Accusatory stage of proceedings.
- 411.6. Investigations in foreign countries.
- 411.7. Form and sufficiency.
- 411.8. Translation.
- 411.9. Repetition.
- 411.10. Right to remain silent.
- 411.11. Right to counsel.
- 411.12. Offenses under investigation.
- 411.13. Vienna Convention rights.
- 411.14. Use of statement.

11. CUSTODY.

- 411.20. In general.
- 411.21. What constitutes custody.
- 411.22. — In general.
- 411.23. — Warnings.
- 411.24. — Particular cases or issues.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 411.25. — Investigatory stops.
- 411.26. — Traffic stops.

12. COUNSEL IN GENERAL.

- 411.30. In general.
- 411.31. Absence or denial of counsel.

13. INTERROGATION IN GENERAL.

- 411.35. In general.
- 411.36. What constitutes interrogation.
- 411.37. — In general.
- 411.38. — Warnings.
- 411.39. — Particular cases or questions.
- 411.40. — Booking or biographical questions.
- 411.41. — Public safety or rescue.

14. CONDUCT OF INTERROGATION.

- 411.45. In general.
- 411.46. Admonition to tell the truth in general.
- 411.47. Particular cases.
- 411.48. Coercion.
- 411.49. — In general.
- 411.50. — Particular cases.
- 411.51. Force; physical abuse.
- 411.52. Promises; hope of benefit.
- 411.53. — In general.
- 411.54. — Nature of promise.
 - (1). In general.
 - (2). Promise of leniency in general.
 - (3). Promises not to prosecute accused.
 - (4). Promises not to prosecute others.
 - (5). Promises as to sentence.
- 411.55. — Private persons, promises by.
- 411.56. Threats; fear of injury.
- 411.57. — In general.
- 411.58. — Threats to third persons.
- 411.59. Deception.
- 411.60. — In general.
- 411.61. — Representations as to physical evidence.
- 411.62. — Representations as to statements of others.

15. PERSONS TO WHOM MADE.

- 411.65. In general.

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- 411.66. Private persons in general.
- 411.67. Informants; inmates.
- 411.68. Agents or officers from other jurisdiction.
- 411.69. Coconspirators, codefendants, and accomplices.
- 411.70. Statements in connection with polygraph examination.
- 411.71. Statements in connection with mental examination.

16. INVOCATION OF RIGHTS.

- 411.75. In general.
- 411.76. Right to remain silent.
- 411.77. — In general.
- 411.78. — Particular cases.
- 411.79. Counsel.
- 411.80. — In general.
- 411.81. — Particular cases.
- 411.82. Effect of invocation.
- 411.83. — In general.
- 411.84. — Right to remain silent.
- 411.85. — Counsel.
- 411.86. — Reinitiating interrogation.
 - (1). In general.
 - (2). Subject matter in general.
 - (3). Clarification of invocation.
 - (4). Other offenses.
 - (5). Lapse of time.
 - (6). Initiation by defendant.

17. WAIVER OF RIGHTS.

- 411.90. In general.
- 411.91. Necessity.
- 411.92. Form and sufficiency in general.
- 411.93. Right to remain silent.
- 411.94. Counsel.
- 411.95. Particular cases.
- 411.96. — In general.
- 411.97. — Right to remain silent.
- 411.98. — Counsel.
- 411.99. Effect; revocation.

18. EFFECT OF PRIOR ILLEGALITY.

- 413.1. In general.
- 413.2. Prior statement.
- 413.3. — In general.
- 413.4. — Purging taint in general.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- 413.5. — Two-step interrogation technique; warnings.
- 413.6. — Delay between initial statement and resumption of interrogation.
- 413.7. Illegal arrest or detention.
- 413.8. — In general.
- 413.9. — Purging taint in general.
- 413.10. — Warnings.
- 413.11. — Lapse of time.
- 413.12. — Particular cases.
- 413.13. Illegal search or seizure.
- 413.14. Delay in arraignment or initial appearance.
- 413.15. — In general.
- 413.16. — Particular cases.

19. DETERMINATION OF ADMISSIBILITY OF STATEMENT, CONFESSION, OR ADMISSION.

- 413.20. In general.
- 413.21. Notice.
- 413.22. Disclosure or production of copy of, or witnesses to, confession, statement, or admission.
- 413.23. Necessity of preliminary proof in general.
- 413.24. Discretion in general.
- 413.25. Motions.
- 413.26. — In general.
- 413.27. — Necessity.
- 413.28. — Time for motion.
- 413.29. — Form and sufficiency.
- 413.30. Presumptions and burden of proof.
- 413.31. — In general.
- 413.32. — Voluntariness.
- 413.33. — Warnings.
- 413.34. — Counsel.
- 413.35. — Custody.
- 413.36. — Invocation of rights.
- 413.37. — Waiver of rights.
- 413.38. Admissibility of evidence.
- 413.39. — In general.
- 413.40. — Hearsay.
- 413.41. Degree of proof.
- 413.42. — In general.
- 413.43. — Voluntariness.
- 413.44. — Warnings.
- 413.45. — Counsel.
- 413.46. — Custody.

XVII. EVIDENCE.(Cont'd)

- 413.47. — Invocation of rights.
- 413.48. — Waiver of rights.
- 413.49. Weight and sufficiency of evidence.
- 413.50. — In general.
- 413.51. — Voluntariness.
- 413.52. — Warnings.
- 413.53. — Counsel.
- 413.54. — Custody.
- 413.55. — Invocation of rights.
- 413.56. — Waiver of rights.
- 413.57. Hearing.
- 413.58. — In general.
- 413.59. — Necessity.
- 413.60. — Time for hearing.
- 413.61. — Conduct of hearing.
- 413.62. — Questions of law and fact.
- 413.63. — Findings.
- 413.64. Rehearing.
- 413.65. Determination; ruling or order.
- 413.66. Order of proof.

20. CORROBORATION.

- 413.70. In general.
- 413.71. Necessity.
- 413.72. — In general.
- 413.73. — Corpus delicti.
- 413.74. — Admissions.
- 413.75. — Confessions.
- 413.76. Sufficiency.
- 413.77. — In general.
- 413.78. — Corpus delicti.
- 413.79. — Admissions.
- 413.80. — Confessions.
- 413.81. — Particular cases.
 - (1). In general.
 - (2). Arson and malicious mischief.
 - (3). Assault and battery.
 - (4). Burglary and trespass.
 - (5). Conspiracy, racketeering, and money laundering.
 - (6). Controlled substances.
 - (7). Counterfeiting and forgery.
 - (8). Disorderly conduct and breach of the peace.
 - (9). Escape.
 - (10). Extortion, threats, stalking, and harassment.
 - (11). False pretenses and fraud.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- (12). Gambling offenses.
- (13). Homicide, mayhem, and assault with intent to kill.
- (14). Infants and endangered persons, offenses specific to.
- (15). Kidnapping and false imprisonment.
- (16). Larceny, embezzlement, and receiving stolen property.
- (17). Liquor offenses.
- (18). Motor vehicle offenses.
- (19). Obscenity and lewdness.
- (20). Obstructing justice, bribery, and perjury.
- (21). Robbery.
- (22). Sex offenses, incest, and prostitution.
- (23). Tax and internal revenue offenses.
- (24). Weapons and explosives.
- (25). Other particular offenses.
- (26). Multiple offenses.

21. EFFECT OF ADMISSION OF STATEMENT, CONFESSION, OR ADMISSION.

- 413.85. In general.
- 413.86. Redaction.
- 413.87. Rule of completeness.
- 413.88. — In general.
- 413.89. — Self-serving statements.

22. WEIGHT AND SUFFICIENCY TO CONVICT.

- 413.90. In general.
- 413.91. Corroboration.
- 413.92. — In general.
- 413.93. — Corpus delicti.
- 413.94. Particular cases.
 - (1). In general.
 - (2). Arson and malicious mischief.
 - (3). Assault and battery.
 - (4). Burglary and trespass.
 - (5). Conspiracy, racketeering, and money laundering.
 - (6). Controlled substances.
 - (7). Counterfeiting and forgery.
 - (8). Disorderly conduct and breach of the peace.
 - (9). Escape.

XVII. EVIDENCE.(Cont'd)

- (10). Extortion, threats, stalking, and harassment.
- (11). False pretenses and fraud.
- (12). Gambling offenses.
- (13). Homicide, mayhem, and assault with intent to kill.
- (14). Infants and endangered persons, offenses specific to.
- (15). Kidnapping and false imprisonment.
- (16). Larceny, embezzlement, and receiving stolen property.
- (17). Liquor offenses.
- (18). Motor vehicle offenses.
- (19). Obscenity and lewdness.
- (20). Obstructing justice, bribery, and perjury.
- (21). Robbery.
- (22). Sex offenses, incest, and prostitution.
- (23). Tax and internal revenue offenses.
- (24). Weapons and explosives.
- (25). Other particular offenses.
- (26). Multiple offenses.

23. USE IN DIFFERENT PROCEEDINGS.

- 413.95. In general.

24. USE OF EVIDENCE OBTAINED BY MEANS OF STATEMENT, CONFESSION, OR ADMISSION.

- 413.96. In general.

(N) HEARSAY.

- 419. Hearsay in general.
 - (1). In general.
 - (1.5). Particular determinations, hearsay inadmissible.
 - (1.10). Exceptions to hearsay rule, and non-hearsay distinguished in general.
 - (2). Evidence as to fact of making declarations and not as to subject-matter.
 - (2.5). "Catch-all" or residual exception.
 - (2.10). Acts or conduct.
 - (2.15). Present sense impression.

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- (2.20). Then-existing state of mind or body.
 - (2.25). Judgments or orders.
 - (2.30). Matters within witness' knowledge or observation; witness' own statements or conduct.
 - (2.35). Others' opinions or test results.
 - (2.40). Evidence showing intent, motive, or nature of act.
 - (2.45). Evidence as to predisposition.
 - (3). Evidence as to information acted on.
 - (4). Statements of witnesses or persons available as witnesses.
 - (5). Statements of persons not available as witnesses.
 - (6). Statements of persons since deceased.
 - (7). Statements made through interpreter.
 - (8). Statements by third persons as to declarations or admissions by accused.
 - (9). Statements of third persons communicated by accused to person injured.
 - (10). Oral statements in general.
 - (11). Conversations with third persons.
 - (12). Written statements.
 - (13). Double hearsay.
 - (14). Notice; determination of admissibility.
421. Evidence founded on hearsay.
- (1). In general.
 - (2). Name.
 - (3). Age.
 - (4). Insanity.
 - (5). Warnings.
 - (6). Identity.

**(O) ACTS AND DECLARATIONS
OF CONSPIRATORS AND
CODEFENDANTS.**

422. Grounds of admissibility in general.
- (1). In general.
 - (2). Conviction, acquittal, or guilty plea of another for same offense.
 - (3). Prior to conspiracy.

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- (4). Motive of accomplice or motive for conspiracy.
 - (5). Declarations against interest.
 - (6). In absence or out of hearing of accused.
 - (7). Admissibility of declarations of coconspirator as affected by acquittal of declarant.
 - (8). In presence of codefendant or coconspirator.
 - (9). Admissibility as against declarant in joint prosecution.
423. Furtherance or execution of common purpose.
- (1). In general.
 - (2). Absence of coconspirators.
 - (3). Character of acts or declarations.
 - (4). Acts and declarations of conspirators not indicted or not on trial.
 - (5). Acts and declarations during actual commission of crime.
 - (6). Acts and declarations not in furtherance of common purpose.
 - (7). Persons whose acts and declarations are admissible as those of conspirators and codefendants.
 - (8). Acts and declarations made prior to formation of conspiracy.
 - (9). Acts and declarations after commission of crime but before complete fulfillment of purpose.
424. After accomplishment of object.
- (1). In general.
 - (2). In presence of codefendant or coconspirator.
 - (3). In absence of coconspirator or codefendant.
 - (4). Joint trial.
 - (5). Acts or declarations forming part of res gestae.
 - (6). Flight of coconspirators or codefendants.
425. Statements as to past acts or transactions.
- 425.5. Confessions.
426. Self-serving acts or declarations.
427. Preliminary evidence as to conspiracy or common purpose.

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- (1). In general; existence of conspiracy.
- (2). Necessity in general.
- (3). Order of proof.
- (4). Competency.
- (5). Weight and sufficiency.
- 428. Proof and effect of acts or declarations.
- (P) DOCUMENTARY EVIDENCE.**
- 429. Public or official acts, proceedings, records, and certificates.
 - (1). In general.
 - (2). Judicial acts, proceedings, and records.
 - (3). Printed statutes and copies of legislative acts.
- 430. Exemplifications, transcripts, and certified copies.
- 431. Private writings and publications.
- 432. — In general.
- 433. — Letters and telegrams.
- 434. — Books and entries therein.
- 435. — Memoranda; past recollection recorded.
- 436. — Registers and records.
 - (1). In general.
 - (2). Business records in general.
 - (3). Particular records.
 - (4). Hotel or motel records.
 - (5). Medical and hospital records.
 - (6). Computer records; printouts.
 - (7). Telephone records.
- 437. — Maps, plats, and diagrams.
- 438. — Photographs and other pictures.
 - (1). In general.
 - (2). Particular prosecutions.
 - (3). Pictures of accused or others; identification evidence.
 - (4). Depiction of places; scene of crime.
 - (5). Depiction of injuries or dead bodies.
 - (5.1). — In general.
 - (6). — Purpose of admission.
 - (7). Photographs arousing passion or prejudice; gruesomeness.
 - (8). Special types of photographs; enlargements, motion and sound pictures, X-rays.

XVII. EVIDENCE.(Cont'd)

- 438.1. — Sound recordings.
- 439. — Historical and scientific books.
- 440. Production of records.
- 441. Production of documents.
- 442. Proof of execution of instruments.
- 444. Authentication and foundation.
 - 444.1. — In general.
 - 444.2. — Necessity of authentication or foundation in general.
 - 444.3. — Presumptions and burden of proof.
 - 444.4. — Sufficiency of evidence; standard of proof in general.
 - 444.5. — Circumstantial evidence in general.
 - 444.6. — Chain of custody in general.
 - 444.7. — Strict compliance.
 - 444.8. — Self-authenticating evidence in general.
 - 444.9. — Business records; books of entry.
 - 444.10. — Tax records.
 - 444.11. — Medical records.
 - 444.12. — Public records in general.
 - 444.13. — Court records and transcripts.
 - 444.14. — Foreign public or court records.
 - 444.15. — Sound recordings.
 - 444.16. — Photographs and videos.
 - 444.17. — Sketches, diagrams, drawings.
 - 444.18. — Letters and notes.
 - 444.19. — Statements.
 - 444.20. — Telecommunications.
 - 444.21. — Motor vehicle or driving records.
 - 444.22. — Particular miscellaneous evidence.
- 445. Examined copies.
- 446. Effect of documentary evidence.

(Q) PAROL EVIDENCE.

- 447. In general.

(R) OPINION EVIDENCE.

- 448. Conclusions and matters of opinion or facts.
 - (1). In general.
 - (2). Facts distinguished from opinions in general.

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XVII. EVIDENCE.(Cont'd)

- (3). Evidence as to intent, belief, or feelings of accused or other person.
- (4). Impressions concerning matters not within the personal knowledge of witness.
- (5). Inferences from failure of witness to observe or know particular fact.
- (6). Personal characteristics.
- (7). Nature, condition, relation, and identity of objects and articles.
- (8). Opinions as to tracks and stains.
- (9). Space, distance, or time.
- (10). Mental condition or capacity.
- (11). Manner, appearance, and conduct of accused and others.
- (12). Opinions as to meaning and effect of words and acts.
- (13). Opinions embodied in declarations of persons injured.
- (14). Opinions as to cause of difficulty.
- (15). Relations existing between accused and others.
- (16). Questions of law.
- 449. Witnesses in general.
- 449.1. — In general; subjects of opinion evidence.
- 449.2. — Intent, belief, or feelings.
- 450. — Matters directly in issue.
- 451. — Inferences or impressions from collective facts.
 - (1). In general.
 - (2). Opinions based on facts brought out or capable of being brought out in evidence.
 - (3). Manner, appearance, and relations of persons.
 - (4). Opinion as to meaning and effect of words and acts of other person.
- 452. — Special knowledge as to subject-matter.
 - (1). In general.
 - (2). Mental condition or capacity.
 - (3). Identity of persons and things.
 - (4). Handwriting.
- 453. — Personal identity and characteristics.

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- 454. — Age.
- 455. — Bodily appearance or condition.
- 456. — Mental condition or capacity.
- 457. — Intoxication.
- 458. — Handwriting.
- 459. — Nature, condition, relation, and identity of objects.
- 460. — Value.
- 461. — Place, space, or distance.
- 462. — Time.
- 463. — Cause and effect.
- 464. — Examination and determination of competency of witness in general.
- 465. — Facts forming basis of opinion.
- 466. — Cross-examination.
- 467. — Rebuttal.
- 468. Subjects of expert testimony.
- 469. — In general.
- 469.1. — Aid to jury.
- 469.2. — Discretion.
- 469.3. — Questions of law.
- 470. — Matters directly in issue; ultimate issues.
 - (1). In general.
 - (2). Particular issues.
 - (3). Occurrence of crime; defendant's participation.
- 471. — Matters of common knowledge or observation in general.
- 472. — Matters involving scientific or other special knowledge in general.
- 473. — Bodily condition.
- 474. — Mental condition or capacity.
 - 474.1. — Intent.
 - 474.2. — Intoxication.
 - 474.3. — Credibility, veracity, or competency.
 - (1). In general.
 - (2). Eyewitnesses.
 - (3). Children.

Excludes evidence concerning battered or abused child syndrome, see §474.4(4) below.
 - (4). Hypnosis, effect of.
- 474.4. — Character traits or profiles; syndromes.

Excludes use of profile to justify arrest, stop, search or seizure, see ARREST, SEARCHES AND SEIZURES and CONTROLLED SUBSTANCES.

 - (1). In general.
 - (2). Rape trauma.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- (3). Battered or abused women, spouses, or domestic partners.
- (4). Battered or abused children.
- (5). Character of defendant; predisposition.
- 474.5. — Practices or modus operandi of offenders.
- 475. — Nature, condition and relation of objects in general.
- 475.1. — Speed.
- 475.2. — Identity or content of substances.
Excludes admissibility of test results, see
§388-388.10 above.
 - (1). In general.
 - (2). Drugs and narcotics.
 - (3). Bodily tissue or fluids.
 - (4). Blood alcohol.
 - (5). Hair.
- 475.3. — Voice identification; linguistics.
- 475.4. — Photographs.
- 475.5. — Fingerprints.
- 475.6. — Footprints.
- 475.7. — Bitemarks.
- 476. — Cause and effect.
- 476.1. — Ballistics and weapons.
- 476.2. — Arson or fires.
- 476.3. — Meaning and effect of words or acts.
- 476.4. — Value.
- 476.5. — Obscenity; community moral standards.
- 476.6. — Miscellaneous matters.
- 477. Competency of experts.
- 477.1. — In general.
- 478. — Knowledge, experience, and skill.
 - (1). In general.
 - (2). Handwriting.
- 479. — Bodily and mental condition.
- 480. — Preliminary evidence as to competency.
- 481. — Determination of question of competency.
- 482. Examination of experts.
- 483. — In general.
- 483.5. — Questions and answers based on facts testified to by expert.
- 484. — Questions and answers based on testimony of others.

XVII. EVIDENCE.(Cont'd)

- 485. — Hypothetical questions and answers.
 - (1). In general.
 - (2). On issue of mental condition or capacity.
- 486. — Basis of opinion.
 - (1). In general.
 - (2). Necessity and sufficiency.
 - (3). Disclosure, necessity and right.
 - (4). Sources of data.
 - (5). Medical testimony in general.
 - (6). Mental condition.
 - (7). Intoxication.
 - (8). Identification of persons, things, or substances.
 - (9). Value.
 - (10). Cause and effect.
- 487. — References to scientific or other authorities.
- 488. — Experiments and results thereof.
- 489. — Cross-examination and redirect examination.
- 490. — Rebuttal.
- 491. Comparison of handwriting.
 - (1). In general.
 - (2). Sufficiency of authentication of standard for comparison of writings.
- 492. Effect of opinion evidence.
- 493. — In general.
- 494. — Experts.

(S) TESTIMONY OF ACCOMPLICES AND CODEFENDANTS.**1. IN GENERAL.**

- 507. Accomplices within rules of evidence.
 - (1). In general.
 - (2). Knowledge and concealment of crime in general.
 - (3). Accessories after the fact.
 - (4). Detectives and informers.
 - (5). Receiver of stolen goods or thief.
 - (6). Victim of abortion.
 - (7). Participation in sexual crimes.
 - (8). Participation in gaming.
 - (9). Perjury and subornation of perjury.

110. CRIMINAL LAW**XVII. EVIDENCE.(Cont'd)**

- (10). Witness against whom indictment is nolle.
- 507.5. Evidence to show witness to be accomplice.
- 508. Admissibility and effect of testimony.
 - (1). In general.
 - (2). Promise or expectation of immunity or benefit in general.
 - (3). Persons jointly indicted in general.
 - (4). Separate trial of persons jointly indicted.
 - (5). Before disposal of case against witness.
 - (6). After nolle prosequi as to witness.
 - (7). After conviction of or plea of guilty by witness.
 - (8). Persons separately indicted.
 - (9). Credibility and effect of testimony.

2. CORROBORATION.

- 510. Necessity.
- 510.5. Admissibility.
- 511. Sufficiency.
- 511.1. — In general.
 - (1). In general.
 - (2). Quantum of proof required.
 - (2.1). — In general.
 - (3). — Evidence warranting conviction or establishing guilt; suspicion.
 - (4). Scope of corroboration in general.
 - (5). Proof of corpus delicti.
 - (6). Particular offenses.
 - (6.1). — In general.
 - (7). — Homicide; abortion.
 - (8). — Intoxicating liquors; narcotics.
 - (9). — Larceny; burglary; robbery; receiving stolen goods.
 - (10). — Sex offenses.
- 511.2. — Connecting accused with crime.
- 511.3. — Circumstantial evidence.
- 511.4. — Competency and sufficiency of particular facts in general.
- 511.5. — Association of defendant with witness, and presence at or near place of crime.
- 511.6. — Possession of stolen property.

XVII. EVIDENCE.(Cont'd)

- 511.7. — Admissions and declarations by defendant.
- 511.8. — Previous admission or declaration of witness.
- 511.9. — Testimony of third persons.
- 511.10. — Corroboration by another accomplice.
- 512. Effect.
- (T) **CONFESSIONS (OBSOLETE, SEE XVII(L, M, O)).**
- (U) **EVIDENCE FROM PRIOR PROCEEDINGS.**
- 539. Admissibility.
 - (1). In general.
 - (2). Testimony of accused.
- 540. Grounds for admission of former testimony.
- 541. — In general.
- 542. — Death or disability of witness.
- 543. — Absence of witness.
 - (1). In general.
 - (2). Sufficiency of predicate to authorize admission of evidence.
- 544. — Opportunity for cross-examination.
- 545. — Identity of accusation and issues.
- 546. Evidence for or against codefendants.
- 547. Method of proof.
 - (1). In general.
 - (2). Use of notes of stenographer.
 - (3). Parol evidence.
 - (4). Authentication and sufficiency of notes and transcript of testimony.
- 548. Effect.

(V) WEIGHT AND SUFFICIENCY.

- 549. Weight and conclusiveness in general.
- 550. Constitutional and statutory provisions.
- 551. Positive and negative evidence.
- 552. Circumstantial evidence.
 - (1). In general.
 - (2). Proof of circumstantial facts.
 - (3). Degree of proof.
 - (4). Relative strength of circumstantial and direct evidence.
- 553. Credibility of witnesses in general.
- 554. Testimony or statement of accused.
- 555. Testimony of interested persons.

110. CRIMINAL LAW**XVII. EVIDENCE. (Cont'd)**

- 556. Conclusiveness of evidence on party introducing it.
- 557. Evidence introduced by adverse party.
- 558. Uncontroverted evidence.
- 559. Inferences from evidence.
- 560. Degree of proof.
- 561. Reasonable doubt.
 - (1). In general.
 - (2). In prosecutions for particular offenses.
 - (3). Created by proof of good character.
- 562. Sufficiency to support conviction in general.
- 563. Corpus delicti.
- 564. Place of commission of offense and venue.
 - (1). In general.
 - (2). Degree of proof.
 - (3). Circumstantial evidence.
 - (4). Proving place of commission by location with respect to private premises.
 - (5). Crime committed in well-known or public locality.
 - (6). Place unknown where some of the acts constituting the crime occurred.
 - (7). Acts constituting crime occurring in different counties.
 - (8). Venue dependent upon location of boundary line of county.
- 565. Time of commission of offense and limitations.
- 566. Identity and characteristics of persons or things.
- 567. Corporate existence and incidents thereof.
- 568. Elements of offenses in general.
- 569. Defenses in general.
- 570. Insanity or other incapacity.
 - (1). In general.
 - (2). Degree of proof.
 - (3). Effect of other determinations or proceedings as to defendant's mental condition.
- 571. Grade or degree of offense.
- 572. Alibi.

XVIII. TIME OF TRIAL.**(A) DECISIONS PRIOR TO 1967.**

See also CONSTITUTIONAL LAW ¶4612.

- 573. Right to speedy trial in general.
- 574. Constitutional and statutory provisions.
- 575. Time for trial.
- 576. Discharge of accused for delay.
 - (1). In general.
 - (2). Cause for delay.
 - (3). Delay in second trial.
 - (4). Delay caused by accused.
 - (5). Consent to or waiver of delay.
 - (6). Delay in finding or filing indictment or information.
 - (7). Failure to hold term of court or impanel jury.
 - (8). Previous demand for trial by accused.
 - (9). Computation of time with reference to the term at which indictment was found.
 - (10). Record entries as to delay.
 - (11). Application for discharge.
- 577. Time for preparation of defense.

(B) DECISIONS SUBSEQUENT TO 1966.

Excludes arrest (see ARREST ¶67), preliminary examination (see CRIMINAL LAW ¶228), formal accusation (see INDICTMENT AND INFORMATION ¶4.5, 7, 42), arraignment (see CRIMINAL LAW ¶264), judgment (see CRIMINAL LAW ¶977(3)), sentence (see SENTENCING AND PUNISHMENT ¶376), probation (see SENTENCING AND PUNISHMENT ¶1892), probation revocation (see SENTENCING AND PUNISHMENT ¶2010, 2025).

- 577.1. In general.
- 577.2. Constitutional and statutory provisions.
- 577.3. Restrictions on delay in general.
- 577.4. Constitutional guarantees; speedy trial in general.
- 577.5. Restrictions under statutes, rules, or plans.
- 577.6. Proceedings subject to time requirements.

Excludes arrest (see ARREST ¶67), preliminary examination (see CRIMINAL LAW ¶228), formal accusation (see INDICTMENT AND INFORMATION ¶4.5, 7, 42), arraignment (see CRIMINAL LAW ¶264), judgment (see CRIMINAL LAW ¶977(3)), sentence (see SENTENCING AND PUNISHMENT ¶376), probation (see SENTENCING AND PUNISHMENT ¶1892), probation revocation (see SENTENCING AND PUNISHMENT ¶2010, 2025).
- 577.7. Duty of prosecution to proceed to trial.

110. CRIMINAL LAW**XVIII. TIME OF TRIAL.**(Cont'd)

- 577.8. Computation.
 - (1). In general.
 - (2). Accrual of right to time restraints.
- 577.10. Factors affecting application of requirements in general.
 - (1). In general; balancing test.
 - (2). Circumstances as determinative.
 - (3). Particular or conjunctive circumstances, fulfillment or denial of right.
 - (4). Cause for delay, "good cause", and excuse or justification in general.
 - (5). Multiple charges or defendants.
 - (6). Absence of witness.
 - (7). Necessities of trial procedure; docket congestion.
 - (8). Delay caused by accused.
 - (9). Consent to or waiver of delay.
 - (10). Demand for trial.
- 577.11. Status of persons affecting trial time.
 - (1). In general; confinement.
 - (2). Defendant unavailable.
 - (3). Defendant confined for other offense.
 - (4). Defendant in custody in another jurisdiction.
 - (5). Intrastate detainees; demand and procedure.
 - (6). Illness or incompetency of defendant; determination of competency.
- 577.12. Delay attributable to prosecution.
 - (1). In general.
 - (2). Deliberate governmental conduct.
- 577.13. Extension of time.
- 577.14. Successive, amended, or reinstated charges; successive trials.
- 577.15. Length of delay.
 - (1). In general.
 - (2). Subsequent to offense.
 - (3). Subsequent to arrest.
 - (4). Subsequent to accusation.
 - (5). Trial term requirements.
- 577.16. Relief; dismissal or discharge.
 - (1). In general.
 - (2). Nature and scope of remedy.
 - (3). Discretion.
 - (4). Prejudice or absence of prejudice.

XVIII. TIME OF TRIAL.(Cont'd)

- (5). Proceedings.
- (5.1). — In general.
- (6). — Motion or application.
- (7). — Time for proceeding.
- (8). — Presumptions and burden of proof.
- (9). — Sufficiency of evidence.
- (10). — Hearing and determination.
- (11). — Dismissal with or without prejudice.

XIX. CONTINUANCE.

- 578. Power and duty of court as to continuance.
- 580. Right of prosecution to continuance.
- 581. — In general.
- 582. — In absence of accused.
- 583. Right of accused to continuance.
- 584. — In general.
- 585. — Codefendants.
- 586. Discretion of court.
- 587. Successive applications.
- 588. Grounds for continuance.
- 589. — In general.
 - (1). In general.
 - (2). Physical or mental condition of accused or others.
 - (3). Procurement of affidavits for change of venue.
 - (4). Codefendants.
 - (5). Objections to jury.
- 590. — Want of preparation.
 - (1). In general.
 - (2). Want of time for preparation by counsel.
- 591. — Local prejudice.
- 592. — Absence of party.
- 593. — Absence of counsel.
- 594. — Absence of witness or evidence in general.
 - (1). In general.
 - (2). Witness residing beyond jurisdiction of court.
 - (3). Probability of securing testimony.
 - (4). Sickness of witness or relatives.
- 595. — Competency or materiality of expected evidence.

110. CRIMINAL LAW**XIX. CONTINUANCE.(Cont'd)**

- (5). In general.
- (1). Materiality of evidence in prosecution for homicide in general.
- (2). Materiality of evidence in prosecution for larceny in general.
- (3). Materiality of evidence in prosecution for rape in general.
- (4). Materiality of evidence in prosecution for other crimes in general.
- (5). Affected by issues made by allegations of indictment.
- (6). Evidence to show that crime was committed in self-defense.
- (7). Evidence as to capacity to commit crime.
- (8). Evidence as to character of party.
- (9). Evidence as to alibi.
- (10). Competency in general.
- 596. — Cumulative or impeaching evidence.
 - (1). Cumulative evidence in general.
 - (2). Corroborating testimony.
 - (3). Impeaching evidence.
- 597. — Credibility and probable effect of expected testimony.
 - (1). In general.
 - (2). Evidence contradictory to testimony of accused or to former testimony of witness.
 - (3). Evidence not changing result of case.
- 598. — Diligence.
 - (1). In general.
 - (2). In procuring witnesses and testimony in general.
 - (3). Failure to procure depositions in general.
 - (4). In procuring documentary evidence.
 - (5). Failure to discover whereabouts of witness.
 - (6). Delay in suing out process.
 - (7). Failure to sue out process for witness in general.
 - (8). Failure to sue out compulsory process for witness.
 - (9). Insufficient process.
 - (10). Excuses for delay.

XIX. CONTINUANCE.(Cont'd)

- 599. — Surprise at trial.
- 600. Admissions to prevent continuance.
 - (1). In general.
 - (2). Admission of affidavit as testimony of absent witness.
 - (3). Admission of expected testimony as true.
 - (4). Impeachment of statement after admission.
 - (5). Appearance of witness after admission.
- 602. Application and affidavits for continuance.
- 603. — In general.
- 603.1. — Necessity for application.
- 603.2. — Sufficiency of application in general.
- 603.3. — Allegations or averments.
 - (1). In general.
 - (3). Generality of allegations.
 - (4). Truth of expected testimony.
 - (5). Conclusions.
 - (6). Information and belief.
 - (7). Facts expected to be proved by absent witness.
 - (8). The fact cannot be proven otherwise than by absent witness.
 - (9). Probability that testimony will be obtained.
 - (10). Cause of absence.
- 603.4. — Showing of diligence.
- 603.5. — Amendments and supplemental affidavits.
- 605. — Time for making.
- 607. — Notice.
- 608. — Affidavits and other proof.
- 609. — Hearing in general.
- 610. — Presence of accused at hearing.
- 611. — Determination.
- 612. Conditions on granting or refusing continuance.
- 613. Time of continuance.
- 614. Second or further continuance.
 - (1). In general.
 - (2). Cumulative evidence of absent witness.
 - (3). Diligence to procure absent witness.
- 615. Order granting or refusing continuance.

110. CRIMINAL LAW**XIX. CONTINUANCE.**(Cont'd)

- 616. Operation and effect.
- 617. Objections and exceptions.

XX. TRIAL.**(A) PRELIMINARY PROCEEDINGS.**

- 618. Condition of prosecution in general.
- 619. Consolidation of proceedings.
- 620. Joint or separate trial of separate charges.
 - (1). In general.
 - (3). Severance, relief from joinder, and separate trial in general.
 - (3.1). — In general.
 - (4). — Discretion of court.
 - (5). — Grounds.
 - (6). — Particular cases.
 - (7). — Proceedings; waiver.
- 621. Order of trial of separate indictments.
 - (.5). In general.
 - (1). Against same defendant.
 - (2). Against separate defendants.
- 622. Joint or separate trials of codefendants.
- 622.6. — In general.
 - (1). In general.
 - (2). Preferences or presumptions.
 - (3). Discretion in general.
 - (4). Conspiracy.
- 622.7. — Grounds for severance or joinder.
 - (1). In general.
 - (2). Relatedness of offenses.
 - (3). Prejudice; fair trial.
 - (4). Conspiracy cases.
 - (5). Aiders, abettors, or accessories.
 - (6). Antagonistic defenses; hostility.
 - (7). Inculcation of defendant by codefendant; conflicting testimony.
 - (8). Evidence admissible only against codefendant; spillover or compartmentalization.
 - (9). Confessions, admissions, or declarations.
 - (10). Availability of codefendant's testimony at joint trial; comment on refusal to testify.
 - (11). Disparity in weight of evidence.
 - (12). Matters pertaining to counsel.

XX. TRIAL.(Cont'd)

- (13). Absence of codefendant; number of codefendants.
- 622.8. — Proceedings.
 - (1). In general.
 - (2). Application or motion.
 - (3). Time for proceedings.
 - (4). Evidence.
 - (5). Hearing.
 - (6). Proceedings at trial.
 - (7). — In general.
 - (8). — Jury issues.
- 622.9. — Waiver.
- 623. Separate trial or hearing on issue of insanity, incapacity, or incompetency.

Excludes extrajudicial examination by experts, see MENTAL HEALTH §434. Insanity or incompetency at time of sentencing, see SENTENCING AND PUNISHMENT §250-272.
- 623.1. — In general.
- 624. — Insanity or incapacity at time of offense.
- 625. — Insanity or incompetency at time of proceedings.
 - (1). In general.
 - (2). Discretion in general.
 - (3). Successive proceedings in general.
- 625.5. — Proceedings on plea of guilty but mentally ill.
- 625.10. — Preliminary proceedings.
 - (1). In general.
 - (2). Evidence; information, or conduct invoking inquiry.
 - (2.1). — In general.
 - (3). — Doubt as to competency; reasonable cause or grounds.
 - (4). Initiation by prosecution or sua sponte by court; absence of request.
- 625.15. — Evidence.
- 625.20. — Conduct of trial or hearing.
- 625.25. — Retrospective or nunc pro tunc hearing.
- 625.30. — Determination; acquittal.
- 625.35. — Waiver or objection by defendant.
- 626. Notice of trial.
- 627. Service of copy of indictment, information, or minutes of evidence.
 - (1). In general.
 - (2). Necessity to serve.

110. CRIMINAL LAW**XX. TRIAL.**(Cont'd)

- (3). Demand for service.
- (4). Time for service.
- (5). Sufficiency of copy.
- (6). Requisites of service.
- (7). Objections for failure to serve, and waiver thereof.
- 627.1. Lie detector, polygraph, drug or truth serum tests.
- 627.2. Depositions.
- 627.5. Discovery prior to and incident to trial.
 - (1). In general; examination of victim or witness.

Examination to determine competency of witness, see WITNESSES.

 - (2). Discretion in ordering disclosure.
 - (3). Prosecution's right to disclosure.
 - (4). Subpoena duces tecum in general.
 - (5). Circumstances precluding disclosure; information unavailable.
 - (6). Work product.
- 627.6. — Information or things, disclosure of.
 - (1). In general.
 - (2). Documents or tangible objects.
 - (3). Particular documents or tangible objects.
 - (4). Reports, memoranda or notes.
 - (5). F. B. I., police and other investigative reports.
 - (6). Records.
- 627.7. — Statements, disclosure of.
 - (1). In general.
 - (2). Defendant's confession or other statement.
 - (3). Statements of witnesses or prospective witnesses.
 - (4). Materiality or relevance of statement.
 - (5). Accuracy or inclusiveness of reproduction; form.
- 627.8. — Proceedings to obtain disclosure.
 - (1). In general.
 - (2). Time when disclosure is permitted.
 - (3). Application, motion or request; affidavits.
 - (4). Examination by court; inspection in camera.

XX. TRIAL.(Cont'd)

- (5). Hearing; excising extraneous matter; review.
- (6). Failure to produce information.
- 627.9. Grand jury proceedings; disclosure.
 - (1). In general; discretion.
 - (2). Grounds for disclosure or inspection.
 - (2.1). — In general.
 - (3). — Challenge of sufficiency or legality of evidence.
 - (4). — Cross-examination or impeachment of witnesses.
 - (5). Proceedings for disclosure.
- 627.10. Informers or agents, disclosure.

Excludes privilege against disclosure on examination of witness, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY §374.

 - (1). In general.
 - (2). Particular cases.
 - (2.1). — In general.
 - (3). — Drug and narcotic offenses.
 - (4). Informer supplying probable cause.
 - (5). Informer not a witness to or participant in offense.
 - (6). Production or location.
 - (7). Proceedings for disclosure.
 - (7.1). — In general.
 - (8). — Hearing; in camera examination.
 - (9). — Compliance and effect of noncompliance.
- 628. Indorsement of witnesses on indictment or information.
 - (1). In general.
 - (2). Necessity of indorsing.
 - (3). Time for making indorsements.
 - (4). Sufficiency of indorsement.
 - (5). Correction or amendment of indorsement.
 - (6). Effect of failure to indorse in general.
 - (7). Competency of witnesses not indorsed.
 - (8). Waiver of irregularities or failure to indorse.
- 629. List of witnesses and disclosure of other matters.
 - (1). In general.
 - (2). Statutes and rules.

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XX. TRIAL.(Cont'd)

- (3). List or disclosure of prosecution witnesses.
- (3.1). — In general.
- (4). — Demand and proceedings thereon.
- (5). — Identification of witnesses; names and addresses.
- (6). List or disclosure of defense witnesses.
- (7). Exchange of lists.
- (8). Supplemental or amended lists.
- (9). Alibi witnesses or defense.
- (9.5). Defense of insanity or incapacity.
- (10). Eyewitnesses; identification evidence.
- (11). Expert witnesses.
- (12). Hypnotized witnesses.
- 629.5. — Effect of failure to make proper disclosure.
 - (1). In general; excuses and sanctions in general.
 - (2). Exclusion of evidence or witnesses.
 - (3). Matters known to opponent; accomplices or codefendants.
 - (4). Surprise and newly-discovered or newly-available evidence.
 - (5). Rebuttal or impeachment witnesses.
 - (6). Alibi.
 - (7). Expert witnesses.
 - (8). Objections and proceedings.
- 630. Disclosure of names of private prosecutors.
- 631. Service of list of jurors.
 - (1). In general.
 - (2). Necessity to serve.
 - (3). Demand for service.
 - (4). Time of service.
 - (5). Sufficiency of list in general.
 - (6). Venireman excused or not summoned.
 - (7). Misnomer of veniremen.
 - (8). Service of special or amended venire.
 - (9). Requisites of service and return thereof.
 - (10). Effect of failure to serve.

XX. TRIAL.(Cont'd)

- (11). Objections and waiver thereof.
- 632. Dockets and pretrial procedure.
 - (1). In general.
 - (2). Dockets and calendars.
 - (3). Motions.
 - (3.1). — In general.
 - (4). — Motions in limine.
 - (5). Pretrial conference or hearing; order.

(B) COURSE AND CONDUCT OF TRIAL IN GENERAL.

See also CONSTITUTIONAL LAW 4598 *et seq.*, 4800 *et seq.*

- 633.1. In general.
- 633.2. Nature and purpose of trial in general.
- 633.3. Role and obligations of judge.
- 633.4. — In general.
- 633.5. — Discretion.
- 633.6. — Order, decorum, and efficiency of proceedings.
- 633.7. Fair and impartial trial in general.
- 633.8. Right of defendant to fair trial in general.
- 633.9. Right of prosecution to fair trial in general.
- 633.10. Requisites of fair trial.
- 633.11. Management of courtroom in general.
- 633.12. Seating in court.
- 633.13. — In general.
- 633.14. — Counsel table.
- 633.15. — Seating of defendant.
- 633.16. Cameras, recording devices, sketches, and drawings.
- 633.17. Security in general; guards in courtroom.
- 633.18. Conduct of or affecting witnesses.
- 633.19. — In general.
- 633.20. — Appearance and attire of witness.
- 633.21. — Conduct of witness.
- 633.22. — Restraint of witness.
- 633.23. — Protection of witness.
- 633.24. Conduct of or affecting defendant.
- 633.25. — In general.
- 633.26. — Appearance and attire in general.
- 633.27. — Civilian or prison clothing.
- 633.28. — Conduct of defendant.

110. CRIMINAL LAW**XX. TRIAL.(Cont'd)**

- 633.29. — Protection of defendant.
- 633.30. Impaired defendants.
- 633.31. Experts and others appointed to assist court.
- 633.32. Publicity, media coverage, and occurrences extraneous to trial.
- 633.33. Gag orders and similar restraints.
- 633.34. Reading indictment.
- 634. Presence of judge.
- 635. Public trial.
 - 635.1. — In general.
 - 635.2. — Purpose of public trial.
 - 635.3. — Requisites of public trial; definitions.
 - 635.4. — Discretion to close proceedings in general.
 - 635.5. — Limitations on power to close proceedings.
 - (1). In general.
 - (2). Alternatives to closure.
 - (3). Narrow tailoring requirement.
 - 635.6. — Considerations affecting propriety of closure.
 - (1). In general.
 - (2). Fair trial.
 - (3). Overriding interest; necessity.
 - (4). Management of courtroom; security, order, and decorum.
 - (5). Protection of confidential or classified information; privacy in general.
 - 635.7. — Nature of proceeding affecting propriety of closure.
 - (1). In general.
 - (2). Proceedings related to competency or sanity.
 - (3). Pretrial proceedings.
 - (4). Jury selection.
 - (5). Proceedings to determine admissibility of evidence.
 - (6). Sentence-related proceedings.
 - (7). Post-trial proceedings.
 - (8). In camera proceedings.
 - 635.8. — Subject of proceeding or of evidence affecting closure.
 - 635.9. — Interests of persons affecting propriety of closure.
 - (1). In general.
 - (2). Spectators.

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- (3). Witnesses and persons associated with witnesses.
- (4). Officers and informants.
- (5). Defendants and persons associated with defendants.
- (6). Victims and persons associated with victims.
- (7). Children and minors.
- (8). Other particular persons or classes of persons.
- 635.10. — Photographing, recording, or broadcasting proceedings.
- 635.11. — Proceedings on request for closure.
 - (1). In general.
 - (2). Necessity, sufficiency, and effect of motion or request.
 - (3). Hearing.
 - (4). Evidentiary matters.
 - (5). Findings.
- 635.12. — Objections to closure and proceedings thereon.
- 635.13. — Waiver of public trial.
 - (1). In general.
 - (2). Sufficiency.
- 636. Presence of accused.

Presence of accused at sentencing, see SENTENCING AND PUNISHMENT §340.

 - (1). In general.
 - (2). Voluntary or temporary absence.
 - (3). During preliminary proceedings and on hearing of motions.
 - (4). On reception of evidence.
 - (5). On view by jury.
 - (6). During argument of counsel.
 - (7). On giving instructions to or otherwise communicating with jury.
 - (8). On rendition of verdict.
 - (9). Proceedings after verdict.
- 637. Custody and restraint of accused.
 - 637.1. — In general.
 - 637.2. — Right to appear without restraints.
 - 637.3. — Discretion of court.
 - 637.4. — Grounds and circumstances affecting use of restraints in general.
 - 637.5. — Particular cases.
 - 637.6. — Restraint outside courtroom, and during transportation.

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- 637.7. — Visibility of restraint; restraint not observed by jurors.
- 637.8. — Taking into custody, and detention of accused.
- 637.9. — Procedure.
 - (1). In general.
 - (2). Hearing.
 - (3). Evidentiary matters.
 - (4). Findings, and statement of reasons.
 - (5). Instructions.
- 642. Appointment and services of interpreter.
- 643. Appointment and services of stenographer.
- 644. Attendance and conduct of officers.
- 645. Right to open and close.
- 648. Time for sessions.
- 649. Adjournments pending trial.
 - (1). In general.
 - (2). To procure witnesses or evidence.
 - (3). For absence of counsel.
 - (4). For consultation of counsel or preparation of defense.
- 650. Experiments and tests.
- 651. View and inspection.
 - (1). In general.
 - (2). Proceedings at view.
- 652. Identification of accused.
- 653. Presence of others under indictment.
- 654. Remarks and conduct of judge.
- 655. — In general.
 - (1). In general.
 - (2). Comments on defense.
 - (3). Remarks on application for continuance.
 - (4). Remarks in selecting jury.
 - (5). Remarks and conduct as to argument and conduct of counsel.
 - (6). Remarks and conduct on giving or refusing instructions.
 - (7). Comments on verdicts in other cases.
 - (8). Remarks as to separation or discharge of jury.
 - (9). Communication with jurors or witnesses.
 - (10). Proceedings for attempted bribery.

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- 656. — Comments on evidence or witnesses.
 - (1). In general.
 - (2). Examination and cross-examination of witnesses.
 - (3). Remarks on ruling on admissibility of evidence.
 - (4). Statement as to what evidence is before jury.
 - (5). Expressions affecting credibility of witnesses.
 - (6). Expression as to credibility of accused.
 - (7). Comment on failure of accused to testify.
 - (8). Expression of opinion as to facts in issue.
 - (9). Expressions as to weight and sufficiency of evidence and guilt of accused.
- 657. — Proceedings for contempt.
- 658. — Proceedings against witness for perjury or other offense.
- 659. Presence and conduct of bystanders.
- 660. Objections and exceptions.

(C) RECEPTION OF EVIDENCE.

See also CONSTITUTIONAL LAW ¶4650 *et seq.*

- 661. Necessity and scope of proof.
- 662. Right of accused to confront witnesses.

Former ¶662(1-8) are now obsolete. Subject matter of those Key Numbers is now classified at ¶662.1-662.80. Effect of doctrine on admissibility of dying declarations, see also HOMICIDE ¶1075-1097.

 - 662.1. — In general.
 - 662.3. — Nature or stage of proceeding.
 - 662.4. — Failure to produce or disclose witnesses or evidence.
 - 662.5. — Informants, failure to produce or disclose.
 - 662.6. — Refusal of codefendants or others to testify.
 - 662.7. — Cross-examination and impeachment.
 - 662.8. — Out-of-court statements and hearsay in general.
 - 662.9. — Availability of declarant.
 - 662.10. — Confessions or declarations of codefendants.
 - 662.11. — Coconspirators' statements.

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- 662.30. — Use of depositions or other discovery.
- 662.40. — Use of documentary evidence.
- 662.50. — Statement as to what absent witness will testify to.
- 662.60. — Testimony at preliminary examination, former trial, or other proceeding.
- 662.65. — Conduct of trial.
- 662.70. — Proceedings in absence of accused.
- 662.80. — Waiver of right.
- 663. Introduction of documentary and demonstrative evidence.
- 664. Reading depositions.
- 665. Separation and exclusion of witnesses.
 - (.5). In general.
 - (1). Power and duty of court.
 - (2). Exceptions from rule.
 - (3). What constitutes violation of rule.
 - (4). Enforcement of rule.
 - (5). Violation of rule by witness without fault of party.
 - (6). Witnesses ignorant of rule.
 - (7). Witnesses present in courtroom, not having been put under the rule.
- 666. Compelling calling of witness.
 - (1). In general.
 - (2). Witnesses indorsed on indictment.
 - (3). Witnesses summoned or present.
 - (4). Eyewitnesses to offense.
 - (5). Witnesses possessing peculiar knowledge.
- 666.5. Consultation between accused or counsel and witnesses.
- 667. Taking oral testimony in general.
 - (1). In general.
 - (2). Reducing testimony to writing.
- 668. Statement by accused.
- 670. Offer of proof.
- 671. Presence of jury during inquiry as to admissibility.
- 672. Provisional or conditional admission.
- 673. Effect of admission.
 - (1). In general.
 - (2). Restriction to special purpose in general.

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- (3). Limiting effect of impeaching evidence.
- (4). Limiting effect of evidence competent only as against one of several defendants.
- (5). Limiting effect of evidence of other offenses.
- 674. Exclusion of improper evidence.
- 675. Cumulative evidence in general.
- 676. Number of witnesses.
- 677. Withdrawal of evidence.
- 678. Election between acts.
 - (.5). In general.
 - (1). Right to compel election.
 - (2). Time for election.
 - (3). What constitutes election.
 - (4). Effect.
 - (5). Failure to demand election.
- 680. Order of proof in general.
 - (1). In general.
 - (2). Proof of corpus delicti.
- 681. Admission of evidence dependent on preliminary proof.
 - (1). In general.
 - (2). Provisional or conditional admission.
 - (3). Effect of failure to subsequently supply proof.
- 682. Scope of evidence in chief.
- 683. Scope of evidence in rebuttal.
 - (1). In general.
 - (2). Discretion of court.
 - (3). On issue of insanity or intoxication.
 - (4). Alibi.
- 684. Admission in rebuttal of evidence proper in chief.
- 685. Reopening case for further evidence.
- 686. — In general.
 - (1). In general.
 - (2). After party offering evidence has rested.
- 687. — After close of evidence.
 - (1). In general.
 - (2). During or after close of argument.
- 688. — After demurrer to evidence or motion to dismiss or direct verdict.
- 689. — After submission of case to jury.

110. CRIMINAL LAW**(D) PROCEDURES FOR EXCLUDING EVIDENCE.**

- 690. Right to object.
- 691. — In general.
- 692. — Estoppel or waiver.
- 693. Time for objection.
- 694. Mode of making objection.
- 695. Sufficiency and scope of objection.
 - (1). In general.
 - (2). General or specific.
 - (3). On joint trial.
 - (4). Statement of grounds.
 - (5). Scope and questions raised.
 - (6). Evidence admissible in part.
- 695.5. Hearing, ruling, and objections.
- 696. Motion to strike out.
 - (1). In general.
 - (2). Necessity of motion.
 - (3). Grounds for motion.
 - (4). Form, requisites, and sufficiency.
 - (5). Necessity of previous objection.
 - (6). Time for motion.
 - (7). Evidence admissible in part.
 - (8). Evidence elicited by party moving to strike out.
 - (9). Ruling or order.
- 697. Exceptions.
- 698. Effect of failure to object or except.
 - (1). In general.
 - (2). Exclusion of evidence by court on its own motion.
 - (3). Repetition of incompetent evidence.

**(E) ARGUMENTS AND CONDUCT OF COUNSEL
(OBSOLETE, SEE XXXI).****(F) PROVINCE OF COURT AND JURY IN GENERAL.**

- 731. Functions as judges of law and facts in general.
- 732. Constitutional and statutory provisions.
- 733. Questions of law or of fact.
- 734. — In general.
- 735. — Mixed questions of law and fact.
- 736. — Preliminary or introductory questions of fact.
- 737. — Issues of fact in general.
 - (1). In general.
 - (2). Place of offense.
- 738. — Elements of offenses.
- 739. — Defenses in general.

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- (1). In general.
- (2). Alibi.
- (3). Limitations.
- (4). Former jeopardy.
- (5). Intoxication.
- 739.1. — Entrapment.
 - (1). In general.
 - (2). Narcotics cases.
 - (3). Other particular offenses.
- 740. — Defense of insanity.
- 741. — Weight and sufficiency of evidence in general.
 - (1). In general.
 - (2). Identity and presence of accused.
 - (3). Confessions, admissions, and declarations.
 - (4). Opinion evidence.
 - (5). Corroboration of accomplices.
 - (6). Circumstantial evidence.
 - (7). Failure of proof.
- 742. — Credibility of witnesses.
 - (1). In general.
 - (2). Accomplices.
 - (3). Effect of impeachment.
- 743. — Credibility of accused.
- 744. — Uncontroverted evidence.
- 745. — Inferences from evidence.
- 747. — Conflicting evidence.
- 748. — Grade or degree of offense.
- 749. — Extent of punishment.
- 750. Withdrawal of particular counts or issues.
- 751. Withdrawal of juror.
- 752. Demurrer to evidence.
- 752.5. Dismissal or nonsuit.
- 753. Direction of verdict.
 - 753.1. — In general.
 - 753.2. — Of acquittal.
 - (1). In general.
 - (2). Grounds in general.
 - (3). Insufficiency of evidence.
 - (3.1). — In general.
 - (4). — Substantial evidence.
 - (5). — Sufficiency to warrant conviction or to present jury question.
 - (6). — Suspicion or conjecture; reasonable doubt.

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- (7). Necessity, requisites and time of motion.
- (8). Hearing and determination.
- 753.3. — Of conviction.
- 754. Instructions invading province of jury.
- 754.1. — In general.
- 755. — Authority to instruct in general.
- 755.5. — Comments on facts or evidence in general.
- 756. — Statement and review of evidence.
- 757. — Credibility of witnesses.
 - (1). In general.
 - (2). Manner of determining credibility.
 - (3). Detectives and informers.
 - (4). Accomplices and codefendants.
 - (5). Interest or bias.
 - (6). Effect of impeachment or failure to impeach.
 - (7). Effect of willful falsehood.
- 758. — Credibility of accused.
- 759. — Inferences from evidence.
 - (1). In general.
 - (2). Intent and malice.
 - (3). Motive or absence of motive.
 - (4). Possession of stolen goods.
 - (5). Flight.
- 760. — Hypothetical statements.
- 761. — Assumptions as to facts.
 - (1). In general.
 - (2). Instructions assuming facts in general.
 - (3). Issues and theories of case.
 - (4). Intent and malice.
 - (5). Time and place of offense.
 - (6). Facts connected with crime charged in general.
 - (7). Manner of commission of offense.
 - (8). Character of articles used in committing offense.
 - (9). Admitted or uncontroverted facts.
 - (10). Facts established by testimony.
 - (11). Commission of offense.
 - (12). Commission by accused of act charged.
 - (13). Guilt of defendant.
 - (14). Commission of other or related offenses.

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- (15). Existence of incriminating evidence.
- (16). Confessions, admissions, and declarations.
- (17). Credibility and impeachment of witnesses.
- (18). Truth, weight, or incriminating character of evidence.
- 762. — Opinion or belief as to facts.
 - (1). In general.
 - (2). Right to express opinion.
 - (3). Weight and effect of evidence.
 - (4). Uncontroverted facts.
 - (5). Guilt of defendant.
- 763. — Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Determination that there is some evidence.
 - (3). Determination that there is no evidence.
 - (5). Reference to evidence as "tending to prove."
 - (6). Weight of particular parts of testimony.
 - (7). Directing verdict or declaring law if jury believe the evidence.
 - (8). Directing verdict or declaring law if certain facts are found.
 - (9). Degree of crime.
 - (10). Intent or malice.
 - (11). Conflicting evidence.
 - (12). Character of evidence.
 - (13). Circumstantial evidence.
 - (14). Confining jury to consideration of part of evidence.
 - (15). Affirmative and negative testimony.
 - (16). Opinion evidence.
 - (17). Purpose of evidence.
 - (18). Corroboration of witness.
 - (19). Confessions.
 - (20). Admissions and declarations.
 - (21). Dying declarations.
 - (22). Defense of insanity.
 - (23). Self-defense.
 - (24). Reasonable doubt.
- 765. — Comments on conduct or character of accused or prosecutor.

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- 766. — Determination of questions of law.
- 767. — Application of law to facts.
- 768. — Instructions as to duties of jury.
 - (1). In general.
 - (2). Duties of individual jurors.
 - (3). Urging agreement.
 - (4). Fixing punishment.

(G) INSTRUCTIONS: NECESSITY, REQUISITES, AND SUFFICIENCY.

See also CONSTITUTIONAL LAW ¶4635.

- 769. Duty of judge in general.
- 770. Issues and theories of case in general.
 - (1). In general.
 - (2). Necessity of instructions.
 - (3). Requisites and sufficiency.
- 771. Corpus delicti.
- 772. Elements and incidents of offense, and defenses in general.
 - (1). In general.
 - (2). Defining or describing offense.
 - (3). Reference to indictment.
 - (4). Time and place of offense.
 - (5). Intent, motive, and malice.
 - (6). Defenses in general.
- 773. Insanity.
 - (1). In general.
 - (2). Sufficiency in general.
 - (3). Disparagement of defense.
 - (4). Test of accountability.
- 774. Intoxication.
- 775. Alibi.
 - (1). In general.
 - (2). Necessity of special instructions.
 - (3). Requisites and sufficiency in general.
 - (4). Sufficiency as to time necessarily covered.
 - (5). Effect of failure to prove.
 - (6). Disparagement of defense.
- 776. Character.
 - (5). In general.
 - (1). Necessity of instructions.
 - (2). Sufficiency in general.
 - (3). Evidence justifying or requiring instructions.
 - (4). Effect of good character in general.
- (5). Effect to generate reasonable doubt.
- (6). Confining effect to doubtful cases.
- (7). Effect of bad character.
- (8). Reference to inability or failure of state to rebut.
- 777. Rules of evidence in general.
- 777.5. Statement and review of evidence.
- 778. Presumptions and burden of proof.
 - (5). In general.
 - (1). Necessity of instructions in general.
 - (2). Sufficiency in general.
 - (3). Necessity of instructions as to presumption of innocence.
 - (4). Sufficiency of instructions as to presumption of innocence.
 - (5). Shifting burden of proof.
 - (6). Intent and motive.
 - (7). Insanity.
 - (8). Alibi.
 - (9). Character.
 - (10). Suppression or fabrication of evidence.
 - (11). Flight or surrender.
 - (12). Self-defense.
- 779. Acts and declarations of conspirators and codefendants.
- 780. Testimony of accomplices and codefendants.
 - (5). In general.
 - (1). Necessity of instructions.
 - (2). Evidence justifying or requiring instructions.
 - (3). Sufficiency in general.
 - (4). Extent of corroboration required.
 - (5). Corroboration by another accomplice.
- 781. Admissions and confessions.
 - (5). In general.
 - (1). Necessity of instructions.
 - (2). Evidence justifying or requiring instructions.
 - (3). Existence of corroborative evidence.
 - (4). Sufficiency in general.
 - (5). Excluding from consideration if found involuntary.
 - (6). Weight and credit.

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- (7). Silence under accusation.
- (8). Statements favorable to defendant.
- 782. Determination of sufficiency of evidence in general.
 - (1). In general.
 - (2). Reference to policy of law and conviction of innocent men.
 - (3). That jury are exclusive judges of facts.
 - (4). Manner of determining sufficiency.
 - (5). Character of evidence in general.
 - (5.5). Identification evidence.
 - (6). Positive and negative testimony.
 - (7). Inferences from evidence.
 - (8). Conflicting evidence.
 - (9). Degree of proof in general.
 - (10). Preponderance of evidence and number of witnesses.
 - (11). Proof to satisfaction of jury.
 - (12). Absolute proof.
 - (13). Matters of defense in general.
 - (14). Insanity or intoxication.
 - (15). Alibi.
 - (16). Self-defense.
- 783. Purpose and effect of evidence.

Includes sufficiency of instruction. Necessity for instruction and duty to instruct, see §673.

 - (1). In general.
 - (2). Limiting effect of impeaching evidence.
 - (3). Directing verdict or declaring law if jury believe the evidence or find certain facts.
- 783.5. Excluding evidence from consideration.
- 784. Circumstantial evidence.
 - (.5). In general.
 - (1). Necessity of instructions in general.
 - (2). Direct and circumstantial evidence.

Necessity of instruction on circumstantial evidence when there is direct evidence, see §814.

 - (3). Circumstances supported by admissions or confessions.
 - (4). Form and sufficiency in general.
 - (5). Degree of proof of circumstances.

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- (6). Circumstances to be consistent with each other.
- (7). Circumstances to be consistent with hypothesis of guilt and inconsistent with that of innocence.
- (8). Weight and effect.
- (9). Sufficiency to generate doubt.
- 785. Credibility of witnesses.
 - (.5). In general.
 - (1). Necessity of instructions.
 - (2). Evidence justifying or requiring instructions.
 - (3). Sufficiency in general.
 - (4). Police officers, detectives, and informers.
 - (5). Relatives of accused.
 - (6). Children.
 - (7). Expert witnesses.
 - (8). Character or conduct of witnesses.
 - (9). Interest or bias.
 - (10). Manner of determining credibility in general.
 - (11). Necessity of instructions as to effect of impeachment.
 - (12). Sufficiency of instructions as to effect of impeachment.
 - (13). Effect of impeachment to generate reasonable doubt.
 - (14). Corroboration of impeached witness.
 - (15). Necessity of instructions as to effect of willful falsehood.
 - (16). Sufficiency of instructions as to effect of willful falsehood.
- 786. Credibility of testimony or statement of accused.
 - (.5). In general.
 - (1). Necessity of instructions.
 - (2). Sufficiency in general.
 - (3). Reference to interest in event.
 - (4). Corroboration.
 - (5). Reference to fact that statement is not under oath.
 - (6). Effect of impeachment or contradiction.
 - (7). Effect of false testimony.
- 787. Failure of accused to testify, to testify fully, or to make statement.

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- (.5). In general.
- (1). Necessity and propriety of instructions.
- (2). Requisites and sufficiency of instructions.
- 788. Failure to call witness or produce evidence.
- 789. Reasonable doubt.
 - (.5). In general.
 - (1). Necessity of defining reasonable doubt.
 - (2). Sufficiency of definitions of reasonable doubt in general.
 - (3). Necessity of instructions requiring proof beyond reasonable doubt.
 - (4). Sufficiency of instructions as to proof beyond reasonable doubt.
 - (5). Instructions not requiring doubt to be reasonable.
 - (6). Giving benefit of doubt to state.
 - (7). Strong, real, substantial, or well-founded doubt.
 - (8). Moral certainty.
 - (9). Abiding conviction, or full satisfaction to moral certainty.
 - (10). Conscientious belief.
 - (11). Belief or doubt as men.
 - (12). Doubt which would influence action in private affairs.
 - (13). Doubt for which reason can be given.
 - (14). Suspicion or probability of guilt.
 - (15). Probability or supposition of innocence.
 - (16). Possibility of innocence.
 - (17). Doubt arising from evidence or want of evidence.
 - (18). Doubt upon any fact.
- 790. Matters of law in general.
- 791. Law applicable to particular issues or theories.
- 792. Principals and accessories.
 - (.5). In general.
 - (1). Necessity of instructions.
 - (2). Evidence justifying or requiring instructions.
 - (3). Form, requisites, and sufficiency of instructions.
- 793. Codefendants.

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- 795. Grade or degree of offense; included offenses.
 - (1). In general.
 - (1.5). Relation between offenses; sufficiency of charging instrument.
 - (1.10). Opportunity for jury pardon, mercy, or compromise.
 - (2). Evidence justifying or requiring instructions.
 - (2.1). — In general.
 - (2.5). — Reasonable or rational basis.
 - (2.10). — Some, any, slight, or weak evidence.
 - (2.15). — Evidence only of offense charged.
 - (2.20). — Evidence only of lesser offense.
 - (2.25). Particular cases and offenses charged.
 - Excludes assault or battery as included offense, see ASSAULT AND BATTERY* \S 96.
 - The intention here is to classify cases according to the greater offense or the offense alleged in the accusatory instrument.*
 - (2.26). — In general.
 - (2.30). — Assault and battery charges.
 - Excludes degree of assault or battery, see ASSAULT AND BATTERY* \S 96.
 - (2.35). — Burglary charges.
 - (2.40). — Larceny, embezzlement, or receiving stolen goods charges.
 - Excludes degree of larceny, see LARCENY* \S 79.
 - (2.45). — Fraud, false pretenses, or forgery charges.
 - (2.50). — Homicide charges.
 - Excludes degree of homicide and assault with intent to kill as included offenses, see HOMICIDE* \S 1450-1462.
 - (2.55). — Motor vehicle offense charges.
 - (2.60). — Kidnapping charges.
 - (2.70). — Drug or narcotics charges.
 - (2.75). — Robbery charges.
 - Excludes degrees of robbery, see ROBBERY* \S 27(5), and assault with intent to rob, see ROBBERY \S 27(7).
 - (2.80). — Sex offense charges; offenses involving infants.
 - (2.85). Attempt as included offense.
 - Excludes attempted robbery, see ROBBERY* \S 27(7).

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- (2.90). Effect of defendant's objection or defense inconsistent with lesser charge.
- (3). Sufficiency in general.
- (4). Effect of doubt as to grade or degree.
- 796. Punishment.
- 797. Power of recommendation to mercy.
- 798. Manner of arriving at verdict.
 - (.5). In general; unanimity.
 - (.6). Several counts or offenses.
 - (.7). Unanimity as to facts, conduct, methods, or theories.
 - (1). Doubt of individual juror.
 - (2). Determination by lot.
- 798.5. Form of verdict.
- 799. Influence of arguments of counsel.
- 800. Definition or explanation of terms.
 - (1). In general.
 - (2). Terms in common use.
 - (3). Technical words.
 - (4). Offenses.
 - (5). Evidence and matters relating thereto.
 - (6). Intent, malice, deliberation, and premeditation.
 - (7). Matters of defense.
- 801. Time for giving instructions.
- 804. Written instructions.
 - (.5). In general.
 - (1). Necessity of writing.
 - (2). Waiver.
 - (3). Nature of instructions in general.
 - (4). Form of verdict.
 - (5). Requisites and sufficiency in general.
 - (6). Modification and explanation.
 - (7). Reducing oral instructions to writing.
 - (8). Signing, sealing, and filing.
 - (9). Manner of giving instructions.
- 805. Form and language in general.
 - (1). In general.
 - (2). Reference to other instructions.
 - (3). Use of particular words or terms.
- 806. Repetition.
 - (1). In general.
 - (2). Matters of defense.

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- (3). Reasonable doubt and degree of proof.
- 807. Argumentative instructions.
 - (1). In general.
 - (2). Duties of jury.
- 808. Reading or quoting authorities or reported cases.
- 808.5. Reading or quoting statutes.
- 809. Confused or misleading instructions.
- 810. Inconsistent or contradictory instructions.
- 811. Undue prominence of particular matters.
 - (1). In general.
 - (2). Weight and effect of evidence of particular facts in general.
 - (3). Elements and incidents of offense.
 - (4). Particular defensive circumstances.
 - (5). Credibility of witnesses.
 - (6). Credibility of accused.
 - (7). Degree of offense.
- 812. Appeals to sympathy or prejudice.
- 813. Abstract instructions in general.
- 814. Application of instructions to case.
 - (1). In general.
 - (2). Evidence justifying instructions in general.
 - (3). Matters not sustained by evidence in general.
 - (4). Matters not in dispute.
 - (5). Elements and incidents of offense in general.
 - (6). Intent and motive.
 - (7). Time and place of offense.
 - (8). Matters of defense in general.
 - (10). Insanity or intoxication.
 - (11). Alibi.
 - (12). Character.
 - (13). Presumptions and burden of proof.
 - (14). Acts and declarations of conspirators and codefendants.
 - (15). Testimony of accomplices.
 - (16). Admissions and confessions.
 - (17). Circumstantial evidence.
 - (18). Credibility of witnesses.
 - (19). Principals and accessories.
 - (20). Grade or degree of offense.

110. CRIMINAL LAW**XX. TRIAL.**(Cont'd)

- (21). Duty of applying instructions to evidence.
- 815. Instructions excluding or ignoring issues, defenses, or evidence.
 - (1). In general.
 - (2). Assumption as to facts.
 - (3). Issues.
 - (4). Elements and incidents of offense.
 - (5). Defenses.
 - (6). Character.
 - (7). Testimony of accomplices.
 - (8). Admissions and confessions.
 - (9). Sufficiency of evidence and reasonable doubt.
 - (10). Credibility of witnesses.
 - (11). Testimony or statement of accused.
 - (12). Principals, accessories, and accomplices.
 - (13). Grade or degree of offense and punishment.
- 817. Instructions as to application of personal knowledge of jurors.
- 818. Instructions correcting previous erroneous instructions and omissions.
- 819. Withdrawal of instructions or remarks.
- 820. Construction of instructions given.
- 821. Inadvertent errors and omissions.
 - (1). In general.
 - (2). Omissions.
- 822. Construction and effect of charge as a whole.
 - (1). In general.
 - (2). Use of particular words or terms.
 - (3). Direction of verdict.
 - (4). Invasion of province of jury.
 - (5). Capacity to commit crime.
 - (6). Elements and incidents of offense.
 - (7). Intent, malice, and motive.
 - (8). Matters of defense.
 - (9). Insanity and intoxication.
 - (10). Character.
 - (11). Presumptions and burden of proof.
 - (12). Testimony of accomplices.
 - (13). Weight and sufficiency of evidence.
 - (14). Credibility of witnesses.

XX. TRIAL.(Cont'd)

- (15). Testimony or statement of accused.
- (16). Reasonable doubt.
- (17). Grade or degree of offense.
- (18). Excluding or ignoring evidence.
- 823. Error in instructions cured by withdrawal or giving other instructions.
 - (1). In general.
 - (2). Curing invasion of province of jury.
 - (3). Capacity to commit crime.
 - (4). Elements and incidents of offense in general.
 - (5). Intent, malice, and motive.
 - (6). Matters of defense.
 - (7). Insanity and intoxication.
 - (8). Character.
 - (9). Presumptions and burden of proof.
 - (10). Weight and sufficiency of evidence.
 - (11). Admissions and confessions.
 - (12). Credibility of witnesses.
 - (13). Credibility of accused.
 - (14). Circumstantial evidence.
 - (15). Reasonable doubt.
 - (16). Principals and accessories.
 - (17). Grade or degree of offense.
 - (18). Excluding or ignoring evidence.

(H) INSTRUCTIONS: REQUESTS.

See also CONSTITUTIONAL LAW ¶4635.

- 824. Necessity in general.
 - (1). In general.
 - (2). Definition or explanation of terms.
 - (3). Grade or degree of offense.
 - (4). Special issues and defenses.
 - (5). Evidence in general.
 - (6). Presumptions and burden of proof.
 - (7). Testimony of accomplices.
 - (8). Purpose and effect of evidence.
 - (9). Circumstantial evidence.
 - (10). Credibility of witnesses.
 - (11). Testimony or statements of accused.
 - (12). Reasonable doubt.
 - (13). Failure of accused to testify.

110. CRIMINAL LAW**XX. TRIAL.(Cont'd)**

- (14). Province of jury.
- (15). Verdict.
- 825. Further or more specific instructions.
 - (1). In general.
 - (2). Elements and incidents of offense.
 - (3). Defenses.
 - (4). Matters of evidence.
- 826. Time for asking instructions.
- 827. Form and requisites of requests.
- 828. Written requests.
- 829. Instructions already given.
 - (1). In general.
 - (2). Issues and theories of case.
 - (3). Elements and incidents of offense.
 - (4). Matters of defense.
 - (5). Self-defense.
 - (6). Insanity and intoxication.
 - (7). Alibi.
 - (8). Character.
 - (9). Presumptions and burden of proof.
 - (10). Testimony of accomplices.
 - (11). Admissions and confessions.
 - (12). Sufficiency of evidence in general.
 - (13). Purpose and effect of evidence.
 - (14). Excluding evidence from consideration.
 - (15). Circumstantial evidence.
 - (16). Credibility of witnesses.
 - (17). Testimony or statement of accused.
 - (18). Reasonable doubt.
 - (19). Doubt of individual juror.
 - (20). Principals and accessories.
 - (21). Grade or degree of offense.
 - (22). Punishment and powers of recommendation to mercy.
- 830. Erroneous requests.
- 832. Withdrawal of requests.
- 833. Manner of giving instructions asked.
- 834. Modification by court.
 - (1). In general.
 - (2). Necessity of giving in language of requests.
 - (3). Elements and incidents of offenses and defenses.
 - (4). Matters of evidence.

XX. TRIAL.(Cont'd)

- (5). Reasonable doubt.
- 835. Refusal of requests.
- 836. Noting disposition of requests.

(I) INSTRUCTIONS: OBJECTIONS AND EXCEPTIONS.

See also CONSTITUTIONAL LAW 4635.

- 838. Right to object or except.
- 839. — In general.
- 840. — Estoppel or waiver.
- 841. Time for objection or exception.
- 842. Mode of making objection.
- 843. Taking and noting exception.
- 844. Sufficiency and scope of objections or exceptions to instructions given.
 - (1). In general.
 - (2). Questions presented.
- 845. Sufficiency and scope of objections or exceptions to failure or refusal to instruct.
- 846. Operation and effect of objections or exceptions.
- 847. Effect of failure to object or except.

(J) ISSUES RELATING TO JURY TRIAL.

- 848. Attendance and custody in general.
- 849. Officer in charge.
- 850. — In general.
- 851. — Oath.
- 852. Admonition to jury or officer.
- 853. Presence during proceedings.
- 854. Separation.
 - (.5). In general.
 - (1). Necessity of keeping jury together generally.
 - (2). Authority or discretion of court to permit separation.
 - (3). Separation by consent of parties.
 - (4). Admonition as condition of permitting separation.
 - (5). Placing juror desiring to absent himself in charge of special officer.
 - (6). Separation before completion of jury.
 - (7). Separation pending proceedings.
 - (8). Separation after agreeing on verdict.
 - (9). What constitutes a separation.

110. CRIMINAL LAW

XX. TRIAL. (Cont'd)

855. Misconduct of or affecting jurors.
- (1). In general.
 - (2). Use of intoxicating liquors.
 - (3). Misconduct of officers in general.
 - (4). Misconduct of third persons in general.
 - (5). Reception of newspapers or mail matter.
 - (6). Presence of judge or officers in jury room.
 - (7). Communication between jurors and officers.
 - (8). Communication between jurors and third persons.
 - (9). Unauthorized view or inspection.
857. Deliberations in general.
- (1). In general.
 - (2). Assertions or arguments of jurors.
 - (3). Consideration of failure to testify or produce witnesses or evidence.
858. Taking papers or articles to jury room.
- (1). In general.
 - (2). Books and compilations of statutes.
 - (3). Documents or demonstrative evidence.
 - (4). Copies of instructions.
859. Reading minutes of or restating testimony.
860. Consideration of view or inspection.
861. Experiments by jurors.
862. Application of personal knowledge of jurors.
863. Instructions after submission of cause.
See also ⚭865(1.5).
- (.5). In general.
 - (1). Authority or discretion of court.
 - (2). Requisites and sufficiency.
864. Communications between judge and jury.
865. Urging or coercing agreement.
- (1). In general.
See also ⚭865(1.5).
 - (1.5). "Allen," "dynamite," or "hammer," etc., charge.
 - (2). Time of keeping jury together.
866. Manner of arriving at verdict.

XX. TRIAL. (Cont'd)

867. Discharge of jury without verdict; mistrial.
Bench trials, see XIII; remarks and conduct of judge, see ⚭655, 656; *conduct and argument of counsel, see* ⚭1980 *et seq.*; *misconduct of or affecting jurors, see* XX(1); *errors and irregularities relating to qualifications of jurors, jury selection, or discharge of particular jurors, see* JURY; *sentencing proceedings, see* SENTENCING AND PUNISHMENT ⚭335, 1779(1).
- 867.1. — In general.
- 867.2. — Discretion of court.
- 867.3. — Grounds in general.
- 867.4. — Necessity in general.
- 867.5. — Otherwise irreparable error or prejudice in general.
- 867.6. — Fairness and justice in general.
- 867.7. — Grand jury and indictment or other accusatory instrument.
- 867.8. — Defendant's mental or physical condition.
- 867.9. — Issues relating to multiple charges or defendants.
- 867.10. — Conduct of trial.
- 867.11. — Counsel.
- (1). In general.
 - (2). Conflict of interest and change of counsel.
 - (3). Effectiveness of counsel or of prose representation.
- 867.12. — Evidentiary matters.
- (1). In general.
 - (2). Demonstrative evidence.
 - (3). Hearsay and documentary evidence.
 - (4). Statements or silence of defendant or co-defendant.
 - (5). Opinions.
 - (6). Other misconduct; character of accused.
 - (7). — In general.
 - (8). — Investigation, arrest, and identification.
 - (9). — Incarceration.
 - (10). — Probation and parole.
 - (11). — Weapons.
 - (12). — Threats, and fear of witnesses or others.
 - (13). — Ambiguity; evidence subject to interpretation.
 - (14). Weight and sufficiency of evidence.

110. CRIMINAL LAW**XX. TRIAL.(Cont'd)**

- 867.13. — Confrontation of witnesses.
- 867.14. — Witnesses.
 - (1). In general.
 - (2). Examination.
 - (3). Cross-examination, impeachment, and bolstering.
 - (4). Unresponsive, unsolicited, and unexpected testimony.
 - (5). Conduct of or affecting witness.
 - (6). Absence of witness.
- 867.15. — Instructions and failure to instruct.
- 867.16. — Failure of jury to reach verdict.
- 867.17. — Time of deliberations.
- 867.18. — Verdict.
- 867.19. — Proceedings on request for mistrial.
- 867.20. — Necessity, sufficiency, and effect of motion; sua sponte declaration.
- 867.21. — Time of motion.
- 867.22. — Waiver, estoppel, and invited error.
 - (1). In general.
 - (2). Acts done or omitted by defense.
 - (3). Defendant's own conduct.
- 867.23. — Necessity and sufficiency of consent.
- 867.24. — Decision or order; findings.
- 867.25. — Effect of determination.
- 868. Objections and disposition thereof.

(K) VERDICT.

- 870. Special verdict or findings.
- 871. Preparation and formulation.
 - (1). In general.
 - (2). Signing.
- 872. Rendition and reception.
- 872.5. Assent of required number of jurors.
- 873. Sealed verdict.
- 874. Polling jurors.
- 875. Form and language in general.
 - (1). In general.
 - (2). Omission of words or symbols.
 - (3). Misuse of words.
 - (4). Mistakes in spelling.
- 876. Designation of parties.
- 876.5. Trial of indictments together.
- 877. Codefendants.

XX. TRIAL.(Cont'd)

- 878. Several counts.
 - (1). In general.
 - (2). Construction, operation, and sufficiency of general verdict.
 - (3). Acquittal or conviction under one of several counts.
 - (4). Inconsistent findings.
 - (5). Dismissal, withdrawal, or abandonment of counts.
- 879. Several pleas.
- 880. Sufficiency.
- 880.1. — In general.
- 881. — General verdict.
 - (1). In general.
 - (2). Responsiveness to issues.
 - (3). Certainty.
 - (4). Several offenses or degrees of same offense.
- 882. — Special verdict or findings.
- 883. Specification of offense or grade or degree thereof.
- 884. Assessment of punishment.
- 885. Recommendation to mercy.
- 886. Surplusage.
- 887. Disregard of instructions.
- 888. Amendment or correction.
- 888.1. — In general.
- 889. — By jury.
- 890. — By court.
- 891. Venire de novo.
- 892. Entry and record.
- 893. Construction and operation.
- 894. Objections and exceptions.

(L) WAIVER AND CORRECTION OF IRREGULARITIES AND ERRORS.

- 895. Defects and objections which may be waived or cured in general.
- 897. Irregularities in preliminary proceedings.
 - (1). In general.
 - (2). Service of copy of indictment or list of jurors or witnesses.
- 898. Irregularities in conduct of trial.
- 899. Rulings as to admissibility of evidence.
- 900. Misconduct of counsel.
- 901. Rulings as to weight and sufficiency of evidence.
- 902. Instructions to jury.

110. CRIMINAL LAW

XX. TRIAL.(Cont'd)

- 903. Misconduct of or affecting jury.
- 904. Verdict.

XXI. MOTIONS FOR NEW TRIAL.

See also CONSTITUTIONAL LAW ¶4646.

- 905. Nature and scope of remedy of new trial in general.
- 906. Constitutional and statutory provisions as to new trial.
- 907. Right of prosecution to new trial.
- 908. Right of accused to new trial.
- 909. — In general.
- 910. — Codefendants.
- 911. Discretion of court as to new trial.
- 912. Successive applications for new trial.
- 912.5. Necessity of objections or exceptions at trial in general.
- 913. Grounds for new trial in general.
 - (1). In general.
 - (2). Disqualification or prejudice of judge or officers at trial.
 - (3). Absence of witness.
 - (4). Imposition of improper sentence.
 - (5). Want of capacity to commit crime.
 - (6). Former conviction for same offense.
- 914. Errors and irregularities in preliminary proceedings.
- 915. Defects in indictment or information as ground for new trial.
- 916. Want of preparation.
- 917. Refusal of continuance.
 - (1). In general.
 - (2). Absence of witness.
- 918. Errors and irregularities in conduct of trial.
 - (1). In general.
 - (2). Irregularities affecting witnesses.
 - (3). Summoning, impaneling, and oath of jury.
 - (4). Proof of corpus delicti.
 - (5). Remarks by judge.
 - (6). Failure to appoint counsel for accused.
 - (7). Trial without plea.
 - (8). Temporary absence of judge.
 - (9). Absence of defendant or counsel.
 - (10). Objections and exceptions at trial.

XXI. MOTIONS FOR NEW TRIAL.(Cont'd)

- 919. Misconduct of counsel for prosecution.
 - (1). In general.
 - (2). In examination of witnesses.
 - (3). In argument in general.
 - (4). Comments on defendant's failure to testify.
 - (5). Objections and exceptions.
- 920. Incompetency or neglect of counsel for defense.
- 921. Rulings on evidence.
- 922. Instructions and failure or refusal to instruct.
 - (1). In general.
 - (2). Failure to give proper instructions.
 - (3). Giving erroneous instructions.
 - (4). Construction or effect of instruction.
 - (5). Harmless error.
 - (6). Instructions after submission of case.
 - (7). Objections and exceptions at trial.
- 923. Competency of jurors and challenges.
 - (1). In general.
 - (2). Previous opinion, prejudice, or declaration.
 - (3). Alienage.
 - (4). Relationship.
 - (5). Age of juror.
 - (6). Physical disability.
 - (7). Member of previous jury.
 - (8). Member of grand jury.
 - (9). Necessity of objections at trial.
- 924. Misconduct of or affecting jurors.
- 925. — In general.
 - (1). In general.
 - (2). Misconduct of prosecuting witness.
 - (4). Taking notes of evidence.
 - (5). Improper influence inducing agreement to verdict.
- 925.5. — Considering matters not in evidence.
 - (1). In general.
 - (2). Visiting or viewing place of crime.
 - (3). Statements by jurors during deliberation.
 - (4). Access to or reading newspapers.
 - (5). Access to or reading law books.

110. CRIMINAL LAW**XXI. MOTIONS FOR NEW TRIAL.(Cont'd)**

- 926. — Use of intoxicating liquors.
- 927. — Separation.
 - (1). In general.
 - (2). Separation after submission of case.
 - (3). Separation after agreement or rendition of informal verdict.
 - (4). Separation by consent of court or counsel.
 - (5). Presumptions and burden of proof as to effect of separation.
- 928. — Communications by or with jurors.
- 929. — Misconduct of officer.
- 930. — Misconduct of bystanders.
- 931. — Necessity of objection at trial.
- 932. — Effect as to result.
- 933. Irregularities or defects in verdict as ground for new trial.
- 934. Verdict contrary to law.
- 935. Verdict contrary to evidence.
 - (5). In general.
 - (1). Weight and sufficiency of evidence in general.
 - (2). Failure of proof.
 - (3). Objections and exceptions.
- 936. Surprise, accident, inadvertence, or mistake.
 - (1). In general.
 - (2). Mistake of counsel.
 - (3). Absence of witness or counsel.
 - (4). Surprise as to testimony of witness.
 - (5). Time for raising question.
 - (6). Effect of failure to ask continuance or postponement.
- 937. Newly discovered evidence.
- 938. — In general.
 - (1). In general.
 - (2). What constitutes newly discovered evidence in general.
 - (3). Facts within knowledge of defendant.
 - (4). Further or other testimony of former witness.
 - (5). Witness rendered competent since trial.
 - (6). Showing mistake at trial.
- 939. — Diligence.
 - (1). In general.

XXI. MOTIONS FOR NEW TRIAL.(Cont'd)

- (2). In procuring absent witnesses.
- (3). Failure to ascertain knowledge of witness.
- (4). Failure to ask continuance.
- 940. — Materiality.
- 941. — Cumulative evidence.
 - (1). In general.
 - (2). What is cumulative evidence.
- 942. — Impeachment of witness.
 - (1). In general.
 - (2). Contradictory statements by witness.
- 943. — Conflicting or contradicted evidence.
- 944. — Credibility.
- 945. — Sufficiency and probable effect.
 - (5). In general.
 - (1). Probable effect of new evidence, in general.
 - (2). Particular evidence or cases.
- 946. Waiver of right to new trial.
- 947. New trial on court's own motion.
- 948. Application for new trial.
- 948.1. — In general.
- 949. — Form and requisites in general.
 - (1). In general.
 - (2). Verification.
 - (3). Amended and supplemental motions.
- 950. — Jurisdiction.
- 951. — Time for making.
 - (1). In general.
 - (2). Before judgment or sentence.
 - (3). In vacation.
 - (4). At term of conviction.
 - (5). At subsequent term.
 - (6). Amended motion.
- 952. — Parties.
- 953. — Notice.
- 954. — Statement of grounds.
 - (1). In general.
 - (2). Competency of jurors.
 - (3). Misconduct of or affecting jurors.
 - (4). Rulings on evidence.
 - (5). Instructions.
 - (6). Verdict contrary to law or evidence.
 - (7). Scope of assignment.

110. CRIMINAL LAW**XXI. MOTIONS FOR NEW TRIAL.(Cont'd)**

955. — Bill of exceptions or statement of case.
 (5). In general.
 (1). Necessity for bill of exceptions.
 (2). Sufficiency.
 (3). Brief of evidence.
956. — Affidavits and other proofs in general.
 (1). In general.
 (2). Necessity for affidavits in general.
 (3). Counter affidavits.
 (4). Sufficiency of proofs in general.
 (5). Absence of witness.
 (6). Absence of judge.
 (7). Incompetency or neglect of counsel for defense.
 (8). Disqualification of jurors in general.
 (9). Presumptions and burden of proof as to disqualification of jurors.
 (10). Sufficiency of proofs as to disqualification of jurors.
 (11). Misconduct of or affecting jurors in general.
 (12). Presumptions and burden of proof as to misconduct of or affecting jurors.
 (13). Sufficiency of proofs as to misconduct of or affecting jurors.
957. — Statements, affidavits, and testimony of jurors.
 (1). In general.
 (2). Denying or explaining assent to verdict.
 (3). Misconduct of jurors, in general.
 (4). Separation of jury.
 (5). Consideration by jury of matters not in evidence.
 (6). Misconduct of others affecting jurors.
958. — Affidavits and evidence as to newly discovered evidence.
 (1). In general.
 (2). Affidavit by defendant or his counsel.
 (3). Affidavit as to diligence.
 (4). Affidavit of proposed witness.
 (5). Counter affidavits.
 (6). Sufficiency of proofs in general.

XXI. MOTIONS FOR NEW TRIAL.(Cont'd)

959. — Hearing and rehearing in general.
 960. — Presence of accused at hearing.
 961. — Determination.
 962. Grant of new trial ineffectual or not beneficial.
 964. Order granting or refusing new trial.
 965. Proceedings at new trial.

XXII. ARREST OF JUDGMENT.

966. Nature and scope of remedy by arrest of judgment.
 967. Grounds for arrest of judgment.
 968. — In general.
 (1). In general.
 (2). Preliminary proceedings.
 (3). Delay in trial.
 (4). Want of jurisdiction.
 (5). Defects or objections as to arraignment or plea.
 (6). Former jeopardy or pendency of other accusation.
 (7). Errors and irregularities in conduct of trial.
 (8). Questions of fact.
 (9). Instructions and failure or refusal to instruct.
 (10). Summoning, impaneling, or swearing jury.
 (11). Disqualification of jurors.
 (12). Misconduct of or affecting jurors.
 (13). Defects in record.
969. — Statutory provisions.
 970. — Defects in indictment or information.
 (1). In general.
 (2). Presentment, return to court, or filing.
 (3). Drawing, impaneling, and organization of grand jury.
 (4). Disqualification of grand jurors.
 (5). Form and requisites in general.
 (6). Joinder of offenses.
 (7). Necessity and sufficiency of allegations in general.
 (8). Allegations as to venue.
 (9). Technical defects.
 (10). Alteration of indictment.
 (11). Variance.

110. CRIMINAL LAW**XXII. ARREST OF JUDGMENT.(Cont'd)**

971. — Defects in or objections to verdict.
- (1). In general.
 - (2). Receiving verdict in absence of judge or defendant.
 - (3). Verdict inconsistent with accusation.
972. — Matter not apparent of record in general.
973. — Insanity of accused.
974. Motions in arrest of judgment.
- (1). In general.
 - (2). Time for making.
 - (3). Statement of grounds.
975. Order for arrest of judgment.
976. Operation and effect of arrest of judgment.

XXIII. JUDGMENT.

See also SENTENCING AND PUNISHMENT.
See also CONSTITUTIONAL LAW ¶4700 *et seq.*

977. Judgment in general.
- (1). In general.
 - (2). Successor in office or subsequent court.
 - (3). Time of pronouncing judgment.
 - (4). Judgment notwithstanding the verdict.
 - (5). What is a conviction.
978. Constitutional and statutory provisions.
979. Jurisdiction.
- (1). In general.
 - (2). Loss of jurisdiction.
980. Judgment on pleas of guilty or nolo contendere.
- (1). In general.
 - (2). Ascertainment of degree of offense.
981. Insanity after conviction.
- (1). In general.
 - (2). Inquisition as to insanity.
990. Requisites and sufficiency of judgment.
- 990.1. — In general.
992. — Conformity to verdict.
994. Entry and record of judgment.
- (1). In general.
 - (2). What constitutes record.
 - (3). Time of entry.
 - (4). Entry nunc pro tunc.

XXIII. JUDGMENT.(Cont'd)

995. Requisites and sufficiency of record of judgment.
- Sentence, see SENTENCING AND PUNISHMENT.*
- (.5). In general.
 - (1). Form.
 - (2). Matters of substance in general.
 - (3). Description of offense.
 - (4). Definiteness and certainty.
 - (5). Fine or fine and imprisonment.
 - (8). Contradiction of, or conflict in, record.
996. Amendment or correction.
- (1). In general.
 - (2). Time for relief.
 - (3). Proceedings.
1000. Certificate of judgment.

XXIV. REVIEW.

Excludes prosecutions for violation of municipal ordinances, see MUNICIPAL CORPORATIONS ¶642.
See also CONSTITUTIONAL LAW ¶3815, 4765 *et seq.*

(A) NATURE AND FORM OF REMEDY.

1004. Nature and scope of remedy in general.
1005. Constitutional and statutory provisions.
1006. Proper mode of review.
- 1006.1. — In general.
1007. — Appeal.
1008. — Writ of error.
1009. — Exceptions.
1010. — Reservation and report or certification of cases or questions.
1011. — Certiorari.
1012. Existence of other remedy.
1013. Election or pendency of other proceeding.
1014. Successive appeals or other proceedings.
1015. Joinder of proceedings.

(B) NATURE AND GROUNDS OF APPELLATE JURISDICTION.

1016. Appellate jurisdiction.
1017. — In general.
1018. — Courts invested with jurisdiction.
1019. — Nature or grade of offense.
1020. — Extent of penalty.
- 1020.5. — Transfer of causes.

110. CRIMINAL LAW**(C) DECISIONS REVIEWABLE.**

- 1021. Decisions reviewable.
- 1021.1. — In general.
- 1022. — Courts and other tribunals subject to review.
- 1023. — Appealable judgments and orders.
 - (1). In general.
 - (2). Finality of determination in general.
 - (3). Preliminary or interlocutory orders in general.
 - (4). Relating to jury.
 - (5). Relating to verdict.
 - (6). On motion for change of venue.
 - (7). Order directing mistrial.
 - (8). On demurrer or motion to quash indictment or to arrest judgment.
 - (9). Necessity of sentence.
 - (10). Necessity of entering judgment.
 - (11). Requisites and sufficiency of judgment or sentence.
 - (12). Orders after judgment in general.
 - (13). On motion for new trial.
 - (14). Modification or correction of judgment, sentence, or record; resentencing.
 - (15). On motion to set aside judgment or coram nobis.
 - (16). Probation or suspension of sentence.

(D) RIGHT OF REVIEW.

- 1023.5. Right to review in general.
- 1024. Right of prosecution to review.
 - (1). In general.
 - (2). Discharge of defendant in general.
 - (3). Indictment quashed or held bad on demurrer or plea.
 - (4). Arrest of judgment.
 - (5). Verdict or judgment of acquittal.
 - (6). Disagreement of jury.
 - (7). Order for new trial.
 - (8). Judgment of intermediate court.
 - (9). Nature or grade of offense and extent of penalty.
 - (10). Purpose of appeal.
 - (11). Cross-appeal by state.

XXIV. REVIEW.(Cont'd)

- (12). Taxation of costs.
- (13). Revenue cases.
- 1025. Right of defendant to review.
- 1026. — In general.
- 1026.10. — Waiver or loss of right.
 - (1). In general.
 - (2). Plea of guilty or nolo contendere.
 - (2.1). — In general.
 - (3). — Exhaustion of remedies in lower court.
 - (4). — Issues considered.
 - (5). — Contingent or conditional plea; reservation of right.
 - (6). Acquiescence or acceptance of benefits.
 - (7). Escape.
 - (8). Evidence.
- 1027. — Codefendants.

(E) PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.**1. IN GENERAL.**

- 1028. Presentation of questions in general.
- 1030. Necessity of objections in general.
 - (1). In general.
 - (2). Constitutional questions.
 - (3). Criminal liability.
 - (4). Questions in intermediate courts.
- 1031. In preliminary proceedings.
 - (1). In general.
 - (2). Competency of grand jurors.
 - (3). Summoning, impaneling, and organization of grand jury.
 - (4). Arraignment and plea.
 - (5). Transfer of cause.
- 1032. Indictment or information.
 - (1). In general.
 - (2). Finding and filing of indictment.
 - (3). Formal requisites of indictment.
 - (4). Filing and formal requisites of information or complaint.
 - (5). Requisites and sufficiency of accusation.
 - (6). Duplicity.
 - (7). Issues, proof, and variance.
- 1033.1. Jurisdiction.
- 1033.2. Venue.
- 1034. Continuance.

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- 1035. Proceedings at trial in general.
 - (1). In general.
 - (2). Preliminary proceedings.
 - (3). Course and conduct of trial in general.
 - (4). Trial by special judge.
 - (5). Competency of jurors and challenges.
 - (6). Summoning and impaneling jury.
 - (7). Counsel for accused.
 - (8). Remarks and conduct of judge.
 - (8.1). — In general.
 - (9). — Comments on evidence and witnesses.
 - (10). Reception of evidence.
- 1036. Evidence.
 - 1036.1. — In general.
 - (1). Objections to evidence in general.
 - (2). Time of objection.
 - (3). Particular evidence.
 - (3.1). — In general.
 - (4). — Wrongfully obtained evidence.
 - (5). — Confessions, declarations, and admissions.
 - (6). — Documentary evidence.
 - (7). — Identification evidence.
 - (8). — Other offenses and character of accused.
 - (9). Exclusion of evidence.
 - 1036.3. — Purpose and effect of evidence.
 - 1036.4. — Best and secondary and demonstrative evidence.
 - 1036.5. — Hearsay.
 - 1036.6. — Opinion evidence.
 - 1036.7. — Testimony at former trial or in other proceeding.
 - 1036.8. — Sufficiency of evidence.
 - 1036.9. — Waiver of objections.
 - 1036.10. Witnesses.
- 1037. Arguments and conduct of counsel.
 - 1037.1. — In general.
 - (1). Arguments and conduct in general.
 - (2). Particular statements, arguments, and comments.
 - (3). Presentation of evidence.
 - (4). Time for objection.

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- 1037.2. — Requests for correction by court.
- 1038. Instructions.
 - 1038.1. — Objections in general.
 - (1). In general.
 - (2). Plain or fundamental error.
 - (3). Particular instructions.
 - (3.1). — In general.
 - (4). — Elements of offense and defenses.
 - (5). — Evidence and witnesses.
 - (6). Form, language, preparation, and delivery; definition of terms.
 - (7). Time for, and form of, objection.
 - 1038.2. — Failure to instruct in general.
 - 1038.3. — Necessity of requests.
 - 1038.4. — Necessity of written requests.
- 1039. Issues related to jury trial.
- 1040. Verdict.
- 1041. Motion for new trial or in arrest.
- 1042. Judgment.
 - 1042.3. Sentencing and punishment.
 - (1). In general.
 - (2). Sentencing proceedings in general.
 - (3). Right to jury determination.
 - (4). Probation and related dispositions.
 - (5). Restitution.
 - 1042.5. Habitual and second offenders.
 - 1042.6. Costs.
 - 1042.7. Proceedings after judgment.
 - (1). In general.
 - (2). Post-conviction relief.
- 1043. Scope and effect of objection.
 - (1). In general.
 - (2). Necessity of specific objection.
 - (3). Adding to or changing grounds of objection.
- 1044. Motion presenting objection.
 - 1044.1. — In general; necessity of motion.
 - (1). In general.
 - (2). Preliminary proceedings; indictment, information, or complaint.
 - (3). Conduct of trial in general.
 - (4). Competency and examination of witnesses.

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- (5). Admission or exclusion of evidence.
- (5.1). — In general.
- (6). — Wrongfully obtained evidence, admission of.
- (7). Sufficiency of evidence.
- (8). Arguments and conduct of counsel.
- 1044.2. — Sufficiency and scope of motion.
 - (1). In general.
 - (2). Renewal of motion.
- 1045. Necessity of ruling on objection or motion.

2. EXCEPTIONS.

- 1048. Necessity of exceptions in general.
- 1049. Review of rulings in preliminary proceedings.
- 1050. Review of rulings as to indictment or pleas.
- 1051. Review of rulings as to jurisdiction and venue.
- 1052. Review of rulings as to continuance.
- 1053. Review of proceedings at trial in general.
- 1054. Review of rulings on evidence.
 - (1). In general.
 - (2). Competency of witnesses.
 - (3). Sufficiency of evidence.
- 1055. Review of rulings as to arguments or conduct of counsel.
- 1056. Review of instructions and failure or refusal to give instructions.
- 1056.1. — In general.
 - (1). Instructions in general.
 - (2). Failure or refusal to instruct in general.
 - (3). Particular instructions.
 - (3.1). — In general.
 - (4). — Instructions omitted or refused.
 - (5). Plain or fundamental error.
- 1056.2. — Statutory provisions.
- 1057. Exceptions to verdict.
- 1058. Exceptions to sentence or judgment.
- 1059. Scope and effect of exception.
 - (1). In general.
 - (2). Necessity of specific exception.

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- (3). Adding to or changing grounds of exception.
- 1060. Necessity of ruling on exceptions.

3. MOTIONS FOR NEW TRIAL OR IN ARREST.

- 1063. Necessity of motion for new trial or in arrest.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Defects in preliminary proceedings.
 - (4). Sufficiency of evidence.
 - (5). Proceedings at trial in general.
 - (6). Instructions.
 - (7). Review on direct bill of exceptions.
- 1064. Statement of grounds for new trial or in arrest.
 - (1). In general.
 - (2). Indictment.
 - (3). Preliminary proceedings.
 - (4). Admission or exclusion of evidence.
 - (5). Sufficiency of evidence.
 - (6). Proceedings at trial in general.
 - (7). Instructions.
 - (8). Misconduct of jury.
- 1064.5. Authentication of statement of grounds for new trial.
- 1065. Necessity of ruling or order on motion for new trial.
- 1066. Exceptions to decision on motion for new trial or in arrest.

4. RESERVED OR CERTIFIED QUESTIONS.

- 1068. Cases and questions reserved or certified.

(F) PROCEEDINGS, GENERALLY.

- 1068.5. Proceedings in general.
- 1069. Time of taking proceedings.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Term at which appeal must be taken.
 - (4). Term to which appeal must be taken.
 - (5). Commencement of period of limitations.

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- (6). Effect of delay.
- 1070. Partics.
- 1070.5. Announcement or allowance in open court.
- 1071. Petition or prayer.
- 1072. Allowance or leave from appellate court.
- 1073. Certificate of probable cause or reasonable doubt.
- 1074. Affidavits.
- 1075. Payment of fees or costs.
- 1076. Bonds or other securities to perfect proceedings.
 - (1). In general.
 - (2). Necessity of bond or undertaking.
 - (3). Power to require appeal bond.
 - (4). Requisites of bonds and undertakings.
 - (5). Amendment, and giving new bond or undertaking.
 - (6). Amount of security.
- 1077. Proceeding in forma pauperis.
- 1077.1. — Proceeding in general.
 - (1). In general; right to allowance.
 - (2). Frivolous or futile appeals; good faith.
 - (3). Application or affidavit.
 - (4). Hearing, determination, certificate, and review.
- 1077.2. — Free record or transcript.
 - (1). In general.
 - (2). Extent of transcript allowable.
 - (3). Application and proceedings for allowance; review.
- 1078. Certification of appeal.
- 1079. Appellate process or notice in general.
- 1080. Writ of error.
- 1081. Notice of appeal.
 - (1). In general.
 - (2). Form and requisites.
 - (3). Service.
 - (4). Time of giving.
 - (4.1). — In general.
 - (5). — Effect of delay.
 - (6). — Excuse for delay; extension of time and relief from default.
- 1081.5. Writ of certiorari and answer or return thereto.

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- 1082. Entry or docketing.
- 1083. Effect of transfer or proceedings therefor.
- 1084. Supersedeas or stay of proceedings.
- (G) RECORD AND PROCEEDINGS NOT IN RECORD.**
- 1. MATTERS TO BE SHOWN BY RECORD.**
- 1086.1. Proceedings sustaining judgment or order in general.
- 1086.2. Jurisdiction of lower court.
- 1086.3. Appointment of special judge.
- 1086.4. Grounds of review in general.
- 1086.5. Change of venue or transfer of cause.
- 1086.6. Proof of venue.
- 1086.7. Matters relating to grand jury.
- 1086.8. Indictment, information, or complaint.
- 1086.9. Arraignment and plea.
- 1086.10. Matters relating to petit jury.
- 1086.11. Proceedings at trial in general.
- 1086.12. Presence of accused.
- 1086.13. Verdict, judgment, and sentence.
- 1086.14. Presentation and reservation of grounds of review.
- 1087.1. Taking and perfecting appeal or other proceeding for review.
 - (1). In general.
 - (2). Process or notice.
- 1087.2. Making and filing bill of exceptions, case, or statement of facts.
- 1087.3. Incorporating evidence.
- 2. SCOPE AND CONTENTS OF RECORD.**
- 1088.1. In general.
- 1088.2. Proof of venue.
- 1088.3. Matters relating to grand jury.
- 1088.4. Indictment, information, or complaint.
- 1088.5. Affidavits.
- 1088.6. Motions.
- 1088.7. Arraignment and plea.
- 1088.8. Matters relating to petit jury.
- 1088.9. Presence of accused and counsel.
- 1088.10. Evidence.
- 1088.11. Instructions.
- 1088.12. Verdict, judgment, or sentence.
- 1088.13. Opinions.

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- 1088.14. Bill of exceptions.
- 1088.15. Papers referred to in record.
- 1088.16. Official certificates or statements accompanying transcript.
- 1088.17. Affidavits accompanying or supplementing transcript.
- 1088.18. Effect of incorporating matters of record in bill of exceptions.
- 1088.19. Matters improperly included.
- 1088.20. Loss or destruction of record.

3. BILL OF EXCEPTIONS.

- 1090. Necessity.
- 1090.1. — In general.
 - (1). In general.
 - (2). Review on record, and errors on face thereof.
 - (3). Particular matters, review of.
- 1090.2. — Statutory provisions.
- 1090.3. — Venue.
- 1090.4. — Preliminary proceedings.
- 1090.5. — Indictment, information, or complaint.
- 1090.6. — Arraignment and plea.
- 1090.7. — Continuance.
- 1090.8. — Evidence.
- 1090.9. — Competency of witnesses.
- 1090.10. — Affidavits.
- 1090.11. — Proceedings at trial in general.
- 1090.12. — Matters relating to petit jury.
- 1090.13. — Arguments and conduct of counsel.
- 1090.14. — Instructions.
- 1090.15. — Verdict, judgment, or sentence.
- 1090.16. — New trial.
- 1090.17. — Motions in arrest.
- 1090.18. — Presentation of exceptions taken.
- 1090.19. — Substitutes.
- 1091. Form and contents.
 - (1). In general.
 - (2). Setting forth errors or irregularities in general.
 - (3). Showing as to examination and impeachment of witnesses.
 - (4). Setting forth errors or irregularities in admission of evidence.

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- (5). Setting forth errors and irregularities in exclusion of evidence.
- (6). Showing that testimony was used at trial.
- (7). Showing errors and irregularities as to petit jury.
- (8). Showing as to improper argument or conduct of counsel.
- (9). Setting forth errors and irregularities as to instructions.
- (10). Setting forth objections, rulings, and exceptions.
- (11). Incorporation of evidence.
- (12). Incorporating instructions.
- (13). Insertion of documents or proceedings.
- (14). Number of bills.
- (15). Construction of bill.
- 1092. Settlement, signing, and filing.
- 1092.1. — In general.
- 1092.2. — Notice of presentation for settlement.
- 1092.3. — Duty to prepare bill.
- 1092.4. — Time for presentation, allowance, or filing in general.
- 1092.5. — Settlement, allowance, or filing during term.
- 1092.6. — Settlement, allowance, or filing after term.
- 1092.7. — Time prescribed or allowed.
- 1092.8. — Compliance with requirements as to time.
- 1092.9. — Extension of time.
- 1092.10. — Compelling allowance or settlement.
- 1092.11. — Allowance or settlement.
 - (1). In general.
 - (2). Necessity of approval, and effect of refusal or disallowance.
 - (3). Qualification or explanation by court.
- 1092.12. — Procuring signatures of bystanders.
- 1092.13. — Signature and seal.
- 1092.14. — Certificate.
- 1092.15. — Service.
- 1092.16. — Filing.
- 1092.17. — Amended or supplemental bills.

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- 1092.18. — Exceptions pendente lite.
- 1093. Scope and sufficiency.
- 1094. Effect of failure to make.
 - (1). In general.
 - (2). Affirmance.
 - (2.1). — In general.
 - (3). — Affirmance where proceedings appear regular.

1095. Striking out.

4. CASE OR STATEMENT OF FACTS.

- 1097. Necessity.
 - (1). In general.
 - (2). Arraignment and plea.
 - (3). Continuance.
 - (4). Evidence.
 - (5). Instructions.
 - (6). New trial.
- 1098. Form and contents.
- 1099. Settlement, signing, and filing.
 - 1099.1. — In general.
 - 1099.2. — Duty to prepare statement.
 - 1099.3. — Service of proposed case or statement.
 - 1099.4. — Service of counter case.
 - 1099.5. — Settlement, allowance, or filing after term.
 - 1099.6. — Time prescribed or allowed.
 - (1). In general.
 - (2). Extension of time.
 - (2.1). — In general.
 - (3). — Time for extension; further extensions.
 - 1099.7. — Due diligence and compliance with time requirements.
 - (1). In general.
 - (2). Computation of time.
 - (3). Effect of noncompliance.
 - (4). Excuse for delay.
 - 1099.8. — Laches of judge, prosecuting attorney, or clerk.
 - 1099.9. — Filing nunc pro tunc.
 - 1099.10. — Signature and seal.
 - 1099.11. — Certificate.
 - 1099.12. — Service.
 - 1099.13. — Filing.
 - 1099.14. — Amended or supplemental statements.

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- 1100. Scope and sufficiency.
- 1101. Effect of failure to make.
- 1102. Striking out.

5. ABSTRACTS OF RECORD.

1103. In general.

6. TRANSCRIPT OR RETURN.

- 1104. In general.
 - (.5). In general.
 - (1). Necessity.
 - (2). Caption.
 - (3). Form and contents in general.
 - (4). Original papers.
 - (5). Index and marginal notes.
 - (6). Proceedings for preparation.
 - (7). Supplemental transcript or return.
 - (8). Paper books.

7. AUTHENTICATION AND CERTIFICATION.

- 1105. In general.
 - (.5). In general.
 - (1). Necessity.
 - (2). Sufficiency.

8. TRANSMISSION AND FILING.

- 1106. In general.
 - (1). In general.
 - (2). Time for transmission or filing.
 - (3). Failure to file in time.
 - (4). Loss, destruction, or withdrawal from files.

9. PRINTING.

1107. In general.

10. SERVICE OF COPIES.

1108. In general.

11. DEFECTS AND OBJECTIONS.

- 1109. In general.
 - (1). In general.
 - (2). Estoppel or waiver.
 - (3). Operation and effect.

12. AMENDMENT AND CORRECTION.

- 1110. In general.
 - (1). In general.

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- (2). Power to amend and correct errors.
- (3). Defects amendable.
- (4). By stipulation.
- (5). Time.
- (6). Proceedings for amendment or correction.
- (7). Supplying omissions.
- (8). Certiorari to bring up record.
- (9). Remission to lower court for correction of defects.

13. CONCLUSIVENESS AND EFFECT.

- 1111. In general.
 - (1). In general.
 - (2). Conclusiveness of recitals.
 - (3). Conclusiveness of bill of exceptions, case, or statement of facts.
 - (4). Conclusiveness of certificate.
 - (5). Conflict in record.

14. IMPEACHING OR CONTRADICTING.

- 1112. In general.

15. QUESTIONS PRESENTED FOR REVIEW.

- 1113. Questions presented for review.
- 1114. — In general.
- 1114.1. — Limitation by scope of record.
 - (1). In general.
 - (2). Bill of exceptions, case or statement of facts.
 - (3). Omission of evidence.
- 1115. — Preliminary proceedings.
 - (1). In general.
 - (2). Selection and impaneling of jury.
- 1116. — Indictment and pleas.
- 1117. — Venue or change of venue.
- 1118. — Time of trial; continuance.
- 1119. — Conduct of trial in general.
 - (1). In general.
 - (2). Reception of evidence.
 - (3). Misconduct of judge.
 - (4). Argument and conduct of counsel.
 - (5). Conduct and deliberations of jury.
- 1120. — Admissibility of evidence.
 - (1). In general.

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- (2). Necessity of showing that evidence was received at trial.
- (3). Necessity of setting forth evidence excluded.
- (4). Necessity of setting forth evidence admitted.
- (5). Necessity of setting forth all the evidence.
- (6). Necessity of setting forth grounds of admissibility.
- (7). Necessity of showing purpose of evidence.
- (8). Necessity of showing grounds of objection or ruling.
- (9). Documentary evidence.
- (10). Competency of witnesses.
- 1121. — Sufficiency of evidence.
 - (1). In general.
 - (2). Necessity of setting forth all the evidence.
 - (3). Necessity of recital or certificate that all the evidence is included.
 - (4). Sufficiency of recital or certificate that all the evidence is included.
- 1122. — Instructions, and failure or refusal to give instructions.
 - (1). In general.
 - (2). Necessity of setting forth grounds of objection.
 - (3). Necessity of setting forth evidence to review instructions given.
 - (4). Necessity of setting forth evidence to review instructions refused.
 - (5). Necessity of setting forth instructions given or refused.
 - (6). Necessity of showing request.
- 1123. — Verdict.
- 1124. — Grounds for new trial.
 - (1). In general.
 - (2). Necessity of setting forth grounds of motion or ruling.
 - (3). Necessity of setting forth evidence given on trial.
 - (4). Necessity of setting forth proceedings and evidence on motion.
- 1125. — Grounds for arrest of judgment.
- 1126. — Sentence or judgment.
- 1127. — Questions arising after judgment.

110. CRIMINAL LAW**16. MATTERS NOT APPARENT OF RECORD.**

1128. In general.

- (1). In general.
- (2). Matters appearing otherwise than by record.
- (4). Evidence presented to appellate court.

(H) ASSIGNMENT OF ERRORS.

1129. In general.

- (.5). In general.
- (1). Necessity.
- (2). Form and requisites in general.
- (3). Specification of errors.
- (4). Including errors in one assignment.
- (5). Amendment.
- (6). Scope and effect of assignment.
- (7). Pleading to assignment and joinder in error.
- (8). Time for filing.

(I) BRIEFS.

1130. In general.

- (.5). In general.
- (1). Necessity.
- (2). Specification of errors.
- (3). Form.
- (4). Filing and service (failure to file or to file in time).
- (5). Points and authorities.
- (6). Reply briefs.

(J) DISMISSAL.

1131. In general.

- (.5). In general.
- (1). Dismissal by appellant.
- (2). Dismissal by court sua sponte.
- (3). Motion to dismiss.
- (4). Grounds of dismissal in general.
- (5). Escape of accused as grounds of dismissal.
- (6). Striking cause from docket.
- (7). Reinstatement of appeal.

(K) HEARINGS.

1132. Hearing.

1133. Rehearing.

(L) SCOPE OF REVIEW IN GENERAL.**1. IN GENERAL.**

1134.1. In general.

2. MATTERS OR EVIDENCE CONSIDERED.

- 1134.2. In general.
- 1134.3. Arrest.
- 1134.4. Searches and seizures.
- 1134.5. Grand jury and indictment.
- 1134.6. Arraignment and plea.
- 1134.7. Summoning, impaneling, or selection of jury.
- 1134.8. Jurisdiction and venue.
- 1134.9. Competency to stand trial.
- 1134.10. Continuance.
- 1134.11. Time for trial.
- 1134.12. Joinder and severance.
- 1134.13. Discovery and disclosure.
- 1134.14. Conduct of trial in general.
- 1134.15. Counsel.
- 1134.16. Arguments and conduct of counsel.
- 1134.17. Evidence.
 - (1). In general.
 - (2). Evidence wrongfully obtained.
 - (3). Weight and sufficiency.
- 1134.18. Witnesses.
- 1134.19. Instructions.
- 1134.20. Issues related to jury trial.
- 1134.21. Verdict and findings.
- 1134.22. Motion for new trial.
- 1134.23. Sentencing.

3. QUESTIONS CONSIDERED IN GENERAL.

- 1134.24. In general.
- 1134.25. Ripeness.
- 1134.26. Mootness.

4. SCOPE OF INQUIRY.

- 1134.27. In general.
- 1134.28. Statutory issues in general.
- 1134.29. Constitutional issues in general.
- 1134.30. Deferential review in general.
- 1134.31. Substituting opinion of appellate court in general.
- 1134.32. Particular issues in general.
- 1134.33. Defenses.
- 1134.34. Arrest.
- 1134.35. Searches and seizures.
- 1134.36. Grand jury and indictment.

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- 1134.37. Arraignment and plea.
- 1134.38. Summoning, impaneling, or selection of jury.
- 1134.39. Jurisdiction and venue.
- 1134.40. Competency to stand trial.
- 1134.41. Continuance.
- 1134.42. Time for trial.
- 1134.43. Joinder and severance.
- 1134.44. Discovery and disclosure.
- 1134.45. Conduct of trial in general.
- 1134.46. Recusal or conduct of trial judge.
- 1134.47. Counsel.
 - (1). In general.
 - (2). Right to counsel.
 - (3). Effective assistance.
 - (4). Arguments and conduct of counsel.
- 1134.48. Reception of evidence.
- 1134.49. Evidence.
 - (1). In general.
 - (2). Identification.
 - (3). Statements, confessions, and admissions.
 - (4). Illegally obtained evidence.
 - (5). Opinion testimony.
 - (6). Other offenses.
 - (7). Weight and sufficiency of evidence.
- 1134.50. Witnesses.
- 1134.51. Instructions.
- 1134.52. Issues related to jury trial.
- 1134.53. Verdict and findings.
- 1134.54. Motion for new trial.

5. THEORY AND GROUNDS OF DECISION IN LOWER COURT.

- 1134.60. In general.

6. EXTENT OF REVIEW AS DETERMINED BY MODE THEREOF.

- 1134.65. In general.

7. NATURE OF DECISION APPEALED FROM AS AFFECTING SCOPE OF REVIEW.

- 1134.70. In general.
- 1134.71. Capital cases, issues unrelated to sentencing.

8. SENTENCING.

- 1134.75. In general.
- 1134.76. Consecutive or cumulative sentences.
- 1134.77. Application of guidelines.
- 1134.78. Proportionality review.
- 1134.79. Right to jury.
- 1134.80. Habitual or career offenders.
- 1134.81. Probation.
- 1134.82. Alternative dispositions.
- 1134.83. Restitution.
- 1134.84. Reduction, modification, or reconsideration.

9. REVIEW OF DECISIONS IN OTHER PROCEEDINGS.

- 1134.85. In general.

10. INTERLOCUTORY, COLLATERAL, AND SUPPLEMENTARY PROCEEDINGS AND QUESTIONS.

- 1134.90. In general.

11. PARTIES ENTITLED TO ALLEGE ERROR.

- 1136. In general.
- 1137. Estoppel or waiver.
 - (1). In general.
 - (2). Error committed or invited by party complaining in general.
 - (3). Instructions.
 - (4). Jurisdiction of court.
 - (5). Admission of evidence.
 - (6). Exclusion of evidence.
 - (7). Sufficiency of evidence.
 - (8). Conduct of trial.

12. AMENDMENTS.

- 1138. In general.

13. REVIEW DE NOVO.

- 1139. In general.

(M) PRESUMPTIONS.

- 1141. In general.
 - (1). In general.
 - (2). Burden of showing error.
- 1142. Matters shown by record.
- 1144. Facts or proceedings not shown by record.
 - 1144.1. — In general; complaint, warrant, and preliminary examination.

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- 1144.2. — Organization and proceedings of grand jury.
- 1144.3. — Indictment or information.
- 1144.4. — Arraignment and pleas.
- 1144.5. — Organization and jurisdiction of trial court.
- 1144.6. — Venue.
- 1144.7. — Time of trial and continuance.
- 1144.8. — Selection and impaneling of jury.
- 1144.9. — Preliminary proceedings.
- 1144.10. — Conduct of trial in general.
- 1144.11. — Presence of accused.
- 1144.12. — Reception of evidence.
- 1144.13. — Sufficiency of evidence.
 - (1). In general.
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1159.2. — Weight of evidence in general.

(1). In general.

(2). Verdict unsupported by evidence or contrary to evidence.

(3). Verdict supported by evidence.

(4). Quantum of evidence in general.

(5). Substantial evidence.

(6). "Some" or "any" evidence.

(7). Reasonable doubt.

(8). Inferences or hypotheses from evidence.

(9). Weighing evidence.

(10). Particular offenses and prosecutions.

1159.3. — Conflicting evidence.

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(2). Province of jury or trial court.

(3). Verdict supported by evidence.

(3.1). — In general.

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(5). Verdict against evidence or weight of evidence; passion or prejudice.

(6). Particular offenses and prosecutions.

1159.4. — Credibility of witnesses.

(1). In general.

(2). Province of jury or trial court.

(3). Character of witnesses or testimony in general.

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1159.7. — Successive verdicts.

1160. Approval of verdict by trial court.

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1163. Presumption as to effect of error; burden.

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(2). Conduct of trial in general.

(3). Rulings as to evidence.

(4). Instructions in general.

(5). Refusal of requests or failure to give proper instructions.

(6). Misconduct of or affecting jurors.

1164. Prejudice to prosecution.

1165. Prejudice to defendant in general.

(1). In general.

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(3). Errors favorable to defendant.

1166. Preliminary proceedings.

(1). In general.

(1.10). Counsel at preliminary hearing.

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(3). Arraignment.

(4). Venue.

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(10.10). Discovery and disclosure; transcripts of prior proceedings.

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(12). Mental examination; determination of competency.

1166.5. Conduct of trial in general.

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1166.6. — In general.

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1166.8. — Custody or restraint of accused; prison clothes.

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(2). Appointment; waiver; appearance pro se.

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- 1166.14. — Absence of accused.
- 1166.15. — Drawing and summoning jury.
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- 1166.17. — Sustaining challenges to jurors.
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- 1166.19. — Swearing jury.
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- 1166.21. — Absence of judge during trial.
- 1166.22. — Remarks and conduct of judge.
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 - (2). Nature of remarks in general.
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- 1166.23. — Conversations between judge and attorney.
- 1167. Rulings as to indictment or pleas.
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 - (6). Errors favorable to defendant.
- 1168. Rulings as to evidence in general.
 - (1). In general.
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- 1169.1. — In general.

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- (9). Hearsay.
- (10). Documentary and demonstrative evidence.
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 - (2). Particular evidence or prosecutions.
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- 1169.6. — Curing error by verdict or determination.
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 - (1.5). Failure or refusal of prosecution to call witness and failure of witness to appear when called by defense.
 - (2). Error in question cured by answer.
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- 1171. Arguments and conduct of counsel.
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 - (1). Conduct of counsel in general.
 - (2). Statements as to facts, comments, and arguments.
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- 1171.2. — Opening statement.
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- 1171.4. — Limitation of time of argument.
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- 1171.8. — Presentation of evidence.
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 - (1). Instructions in general.
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 - (4). — Defenses.
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 - (4.3). — Deliberations; unanimity.
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- (3). Defenses.
- (4). Grade or degree of offense; included offenses; punishment.
- (5). Evidence in general.
- (6). Testimony of accomplices and co-defendants.
- (7). Admissions and confessions.
- (8). Weight and sufficiency of evidence in general.
- (9). Purpose and effect of evidence; excluding evidence from consideration.
- (10). Circumstantial evidence.
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- 1174. Conduct and deliberations of jury.
 - (1). In general.
 - (2). Misconduct of jurors in general.
 - (3). Use of intoxicating liquor.
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 - (2). Sentencing proceedings in general.
 - (3). Right to jury determination.
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 - (7). — Admissibility of evidence; arrest and search.
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 - (4.1). — In general.
 - (5). — Application of indeterminate sentence law.
- 1185. Reversal.
- 1186.1. — Grounds in general.
- 1186.2. — Statutory provisions.
- 1186.3. — Defects in indictment or information.
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- (4). Rulings as to evidence in general.
- (5). Admission of evidence.
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- (7). Argument and conduct of counsel.
- (8). Instructions.
- (9). Failure or refusal to instruct.
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- 1186.6. — Confession of error.
- 1186.7. — Practice as to granting and on reversal.
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- 1191. Rendition, form, and entry of judgment.
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- 1196. Accrual or release of liability by breach or fulfillment of conditions.
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 - (1). In general.
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- (18). Counsel of defendant's choice or defendant pro se.
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- 1523. Conduct and remarks of trial judge.
- 1524. Bias of judge; recusal.
- 1525. Evidence.
- 1526. — In general.
- 1527. — Presumptions and burden of proof.
- 1528. — Admissibility in general.
- 1529. — Lineups and identification.
- 1530. — Statements, confessions, and admissions.
 - (1). In general.
 - (2). Voluntariness.
 - (3). Warnings.
 - (4). Waiver.
- 1531. — Illegally-obtained evidence.
- 1532. — Opinion and expert testimony.
- 1533. — Other offenses.
- 1534. — Weight and sufficiency.
- 1535. — Exclusion of evidence.
- 1536. Newly discovered evidence.
- 1537. Perjured testimony.
- 1538. Recantation.
- 1539. Confrontation of witnesses.
- 1540. Witnesses.
- 1541. — In general.
- 1542. — Competency.
- 1543. — Examination.
- 1544. — Cross-examination.
- 1545. — Impeachment.
- 1550. Conduct and argument of prosecutor.
- 1551. Instructions.
- 1552. — In general.
- 1553. — Failure or refusal to give instructions.
- 1554. Issues relating to jury trial.

110. CRIMINAL LAW

XXX. POST-CONVICTION RELIEF.(Cont'd)

- 1555. Verdict and findings.
- 1556. Sentence and punishment.
- 1556.5. Right to jury determination of sentencing issues.
- 1557. Matters arising after sentencing or conviction.
- Proceedings subject to review, see also §1415.*
 - (1). In general.
 - (2). Execution of sentence.
 - (3). Conditions of confinement.
 - (4). Probation, parole, or pardon.
- 1558. Judgment.
- 1559. Appeal.
- 1560. Costs.

(C) PROCEEDINGS.

1. IN GENERAL.

- 1570. In general.
- 1571. Estoppel.
- 1572. Waiver.
- 1573. Parties.
- 1574. Petition or motion.
- 1575. — In general.
- 1576. — Characterization.
- 1577. — Construction.
- 1578. — Pro se petitions or motions.
- 1579. — Formal requirements.
- 1580. — Particular issues.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Plea.
 - (4). Pretrial proceedings.
 - (5). Mental capacity.
 - (6). Admissibility of evidence.
 - (7). Confessions, statements, and admissions.
 - (8). Conduct of trial.
 - (9). Argument and conduct of prosecutor.
 - (10). Right to counsel.
 - (11). Newly discovered evidence.
 - (12). Sentencing.
- 1581. Verification, exhibits and attachments.
- 1582. Answer or return.
- 1583. Issues, proof and variance.
- 1584. Rule to show cause.
- 1585. Process or notice.
- 1586. Time for proceedings.

XXX. POST-CONVICTION RELIEF.(Cont'd)

- 1587. Jurisdiction.
- 1588. Venue.
- 1589. Leave to apply.
- 1590. Discovery and disclosure.
- 1591. Dismissal.
- 1592. — In general.
- 1593. — With or without prejudice.
- 1594. Presence of accused.
- 1600. Counsel.
- 1601. — In general.
- 1602. — Right to counsel.
- 1603. — Self-representation.
- 1604. — Access to counsel.
- 1605. — Presence of counsel.
- 1606. — Waiver of counsel.
- 1607. — Conflict of interest.

2. AFFIDAVITS AND EVIDENCE.

- 1610. In general.
- 1611. Discretion.
- 1612. Presumptions.
 - (1). In general.
 - (2). Counsel.
- 1613. Burden of proof.
- 1614. Admissibility.
- 1615. Degree of proof.
- 1616. Sufficiency.
- 1617. — In general.
- 1618. — Particular issues.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Plea.
 - (4). Pretrial proceedings.
 - (5). Mental capacity.
 - (6). Admissibility of evidence.
 - (7). Confessions, statements, and admissions.
 - (8). Conduct of trial.
 - (9). Argument and conduct of counsel.
 - (10). Defense counsel.
 - (11). Newly discovered evidence.
 - (12). Perjured testimony and recantation.
 - (13). Sentencing.
 - (14). Appeal.
 - (15). Exhaustion and procedural default.

110. CRIMINAL LAW**3. HEARING AND DETERMINATION.**

- 1650. In general.
- 1651. Necessity for hearing.
- 1652. — In general.
- 1653. — Questions of law or fact.
- 1654. — Discretion.
- 1655. — Particular issues.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Plea.
 - (4). Pretrial proceedings.
 - (5). Mental capacity.
 - (6). Counsel.
 - (7). Perjured testimony and recantation.
 - (8). Conduct of trial.
 - (9). Exhaustion and procedural default.
- 1656. Scope of hearing.
- 1657. Time for hearing.
- 1658. Public hearing.
- 1659. Presence of accused.
- 1660. Findings.
- 1661. Decision or order.
- 1662. Disposition.
- 1663. — In general.
- 1664. — Discharge.
- 1665. — New trial.
- 1666. Effect of determination.
- 1667. — In general.
- 1668. — Successive post-conviction proceedings.
 - (1). In general.
 - (2). Abuse.
 - (3). Particular issues and cases.
 - (4). Excuses for failure to raise issue in previous post-conviction proceeding.
 - (5). — In general.
 - (6). — Particular issues and cases.
 - (7). — Counsel.
 - (8). — Newly discovered evidence.
 - (9). Proceedings.
- 1669. Costs; transcripts.

XXXI. COUNSEL.**(A) COUNSEL FOR PROSECUTION.**

- 1690. In general.
- 1691. Disqualification of prosecutor.

XXXI. COUNSEL. (Cont'd)

- 1692. — In general.
- 1693. — Disqualification of chief prosecutor or of office itself.
- 1694. — Disqualification of assigned prosecutor.
- 1695. — Disqualification of one prosecutor affecting or imputed to the rest of the office.
- 1696. — Procedure.
- 1697. Extent of participation in proceeding.
- 1698. Appointment of special prosecutor.
- 1699. — In general.
- 1700. — Grounds for employment or appointment of special prosecutor.
- 1701. — Authority of special prosecutor.
- 1702. — Eligibility and qualifications of special prosecutor.
- 1703. — Procedure.
- 1704. Private counsel.

(B) RIGHT OF DEFENDANT TO COUNSEL.**1. IN GENERAL.**

- 1710. In general.
- 1711. Offenses, tribunals, and proceedings involving right to counsel.
- 1712. — In general.
- 1713. — Criminal nature of proceeding, in general.
- 1714. — Nature or degree of offense.
- 1715. — Penalty, potential or actual.

2. STAGE OF PROCEEDINGS AS AFFECTING RIGHT.

- 1717. In general.
- 1718. Critical stages.
- 1719. Adversary or judicial proceedings.
- 1720. Particular proceedings or occasions in general.
- 1721. Investigative proceedings generally; witness interviews; search or surveillance; eavesdropping and use of informers.
- 1722. Inquiry, interrogation, or conversation; request for attorney while in custody.
- 1723. Identification.
- 1724. — In general.
- 1725. — Photographic identification.
- 1726. — Lineup or showup.
- 1727. Hair, blood, tissue samples; testing.

110. CRIMINAL LAW**XXXI. COUNSEL.**(Cont'd)

- 1728. Arrest.
- 1729. Grand jury; indictment, information, or complaint.
- 1730. Preliminary examination; arraignment; appearance; bail.
- 1731. Guilty pleas; plea negotiations, plea hearings, motion to withdraw.
- 1732. Pretrial proceedings in general.
- 1733. — In general.
- 1734. — Depositions and discovery.
- 1735. — Evidentiary hearings.
- 1736. Competency hearing; mental examination.
- 1737. Events during trial.
- 1738. — In general.
- 1739. — Instructions; communications with jury.
- 1740. New trial phase.
- 1741. Appeal or certiorari; further appeal; proceedings on remand.
- 1742. Collateral attacks or ancillary proceedings in general.

3. WAIVER OF RIGHT TO COUNSEL.

- 1750. In general; right to appear pro se.
- 1751. Capacity and requisites in general.
- 1752. Validity and sufficiency, particular cases.
- 1753. Guilty plea.
- 1754. Delay or misuse of waiver or right of self-representation.
- 1755. Effect of waiver or appearing pro se.
- 1756. Waiver in proceedings after trial.
- 1757. Forfeiture or waiver of right by delay or misconduct.

4. STATUS AND COMPETENCE OF ACCUSED AFFECTING RIGHTS AND WAIVER.

- 1760. In general.
- 1761. Health in general.
- 1762. Mental competence in general.
- 1763. Chemical dependency.
- 1764. Age.
- 1765. Education and experience.
- 1766. Indigence.

5. PROCEDURE AND AFFIRMATIVE DUTIES BY COURT IN PROTECTION OF RIGHT TO COUNSEL AND RIGHT TO SELF-REPRESENTATION.

- 1770. In general.

XXXI. COUNSEL.(Cont'd)

- 1771. Presumptions as to waiver, burden of proof.
- 1772. Duty of inquiry, warning, and advice.
- 1773. — In general.
- 1774. — Particular cases.
 - (1). In general.
 - (2). Waiver of right to counsel.
 - (3). Indigence.
- 1775. Hearing; necessity and conduct.
- 1776. Decisions, findings, and order.

6. CONFLICT OF INTEREST.

- 1780. In general.
- 1781. Prejudice and harm in general.
- 1782. Particular cases or situations.
- 1783. — In general.
- 1784. — Prejudice and harm in particular cases or situations.
- 1785. — Disagreement as to strategy.
- 1786. — Partners and associates; public defenders.
- 1787. — Previous or concurrent representation of witness or other party.
- 1788. — Counsel formerly a prosecutor; family relationships with prosecutors.
- 1789. Presumptions and burden of proof.
- 1790. Advice, inquiry, and determination.
- 1791. Objections and waiver.

7. JOINT REPRESENTATION OF CODEFENDANTS.

- 1800. In general.
- 1801. Particular cases.
- 1802. Prejudice and harm.
- 1803. Partners and associates; public defenders.
- 1804. Presumptions and burden of proof.
- 1805. Advice, inquiry, and determination.
- 1806. Objections and waiver.

8. NUMBER OF COUNSEL.

- 1810. In general.
- 1811. On appeal.

9. CHOICE OF COUNSEL.

- 1820. In general.
- 1821. Forcing counsel on accused.
- 1822. Choice of appointed counsel.
- 1823. Change in general.

110. CRIMINAL LAW**XXXI. COUNSEL.**(Cont'd)

- 1824. Discharge by accused.
- 1825. — In general.
- 1826. — Discretion of court.
- 1827. — Right to discharge or substitute.
- 1828. — Particular cases.
 - (1). In general.
 - (2). Discharge for self-representation.
- 1829. — Time for motion.
- 1830. — Procedure.
- 1831. Withdrawal by counsel.
- 1832. — In general.
- 1833. — Anders withdrawal on appeal.
 - (1). In general.
 - (2). Particular cases, withdrawal allowed.
 - (3). Withdrawal disallowed; arguable merit.
- 1834. Appearing both pro se and by counsel; hybrid representation.
- 1835. — In general.
- 1836. — Particular cases.
- 1837. — Requiring advisory counsel.
- 1838. — Defendant filing pro se motions while represented by counsel.
- 1839. — Extent of participation by counsel.

10. PUBLIC DEFENDERS.

- 1840. In general.

11. DEPRIVATION OR ALLOWANCE OF COUNSEL.

- 1850. In general.
- 1851. Prejudice and presumptions.
- 1852. Particular cases in general.
- 1853. Interference in attorney-client relationship.
- 1854. Presence of counsel.
- 1855. Denial of continuance; time for preparation.
- 1856. Notice of right to counsel.
- 1857. Consultation with counsel; privacy.
- 1858. Assisting and compensating counsel.
- 1859. Experts and investigators.
- 1860. Effect of representation or deprivation of rights.
- 1861. — In general.
- 1862. — Remedies.

(C) ADEQUACY OF REPRESENTATION.**1. IN GENERAL.**

- 1870. In general.
- 1871. Presumptions and burden of proof in general.
- 1872. General qualifications of counsel.
- 1873. — In general.
- 1874. — License.
- 1875. — Pending or previous disciplinary proceedings, suspension, or disbarment.
- 1876. — Experience, training, education.
- 1877. — Health issues and disclosure thereof.
- 1878. — Other particular issues.
- 1879. Standard of effective assistance in general.
- 1880. — In general.
- 1881. — Deficient representation and prejudice in general.
- 1882. — Deficient representation in general.
- 1883. — Prejudice in general.
- 1884. — Strategy and tactics in general.
- 1885. — Exceptions to two-pronged standard.
- 1886. — Death penalty cases.
- 1887. Duty of court to inquire as to effectiveness in general.
- 1888. Determination.

2. PARTICULAR CASES AND ISSUES.

- 1890. In general.
- 1891. Preparation for trial.
- 1892. Preparation for death penalty matters.
- 1893. Pretrial proceedings in general.
- 1894. Grand jury.
- 1895. Indictment and information.
- 1896. Judges; recusal.
- 1897. Bail.
- 1898. Severance of charges.
- 1899. Severance of defendants.
- 1900. Competence to stand trial; sanity hearing.
- 1901. Jury selection and composition.
- 1902. Venue.
- 1903. Continuance.
- 1904. Speedy trial.
- 1905. Discovery.

110. CRIMINAL LAW**XXXI. COUNSEL.(Cont'd)**

- 1906. Witness lists.
- 1907. Stipulations.
- 1908. Raising of particular defense or contention.
- 1909. — In general.
- 1910. — Nature and elements of crime.
- 1911. — Limitations.
- 1912. — Capacity to commit crime; insanity or intoxication.
- 1913. — Alibi.
- 1914. — Selective prosecution.
- 1915. — Vindictive prosecution.
- 1916. — Entrapment.
- 1917. — Self-defense; defense of another.
- 1918. — Former jeopardy.
- 1919. Arraignment.
- 1920. Plea.
- 1921. Introduction of and objections to evidence at trial.
- 1922. — In general.
- 1923. — Investigating, locating, and interviewing witnesses or others.
- 1924. — Presentation of witnesses.
- 1925. — Examination of witnesses.
- 1926. — Suppression of evidence.
- 1927. — Other offenses and prior misconduct.
- 1928. — Character of accused.
- 1929. — Hearsay.
- 1930. — Identification.
- 1931. — Experts; opinion testimony.
- 1932. — Declarations, confessions, and admissions.
- 1933. — Documentary evidence.
- 1934. — Demonstrative evidence.
- 1935. — Impeachment or contradiction of witnesses.
- 1936. — Defendant as witness.
- 1937. Trial in general; reception of evidence.
- 1938. Objections to prosecution evidence at trial in general.
- 1939. Confrontation.
- 1940. Sequestration of witnesses.
- 1941. Argument and conduct of defense counsel.
- 1942. — In general.
- 1943. — Admissions or concessions.

XXXI. COUNSEL.(Cont'd)

- 1944. Objections to argument or conduct of counsel.
- 1945. Instructions.
- 1946. — In general.
- 1947. — Offering instructions.
- 1948. — Objecting to instructions.
- 1949. — Limiting and curative instructions.
- 1950. — Lesser included offense instructions.
- 1951. Deliberations and verdict.
- 1952. Sentencing in general.
- 1953. — In general.
- 1954. — Adequacy of investigation of sentencing issues.
- 1955. — Presentation of evidence regarding sentencing.
- 1956. — Arguments and comments.
- 1957. — Other particular issues.
- 1958. Death penalty.
- 1959. — In general.
- 1960. — Adequacy of investigation of mitigating circumstances.
- 1961. — Presentation of evidence in sentencing phase.
- 1962. — Argument and comments.
- 1963. — Other particular issues in death penalty cases.
- 1964. Proceedings following trial in general.
- 1965. New trial motion.
- 1966. Appeal.
- 1967. — In general.
- 1968. — Preservation of error for appeal.
- 1969. — Raising issues on appeal; briefs.
- 1970. — Procedure in general; timeliness.
- 1971. Post-conviction relief and error coram nobis.
- 1972. Habeas corpus.
- 1973. Multiple particular grounds.
- 1974. Indigent's or incompetent's counsel and public defenders.
- 1975. Counsel of defendant's choice or defendant pro se.

(D) DUTIES AND OBLIGATIONS OF PROSECUTING ATTORNEYS.**1. IN GENERAL.**

- 1980. In general.
- 1981. Duty to allow fair trial in general.

110. CRIMINAL LAW**XXXI. COUNSEL.**(Cont'd)

- 1982. Prejudice resulting from improper conduct; unfairness or miscarriage of justice.
- 1983. Assertion of theory inconsistent with theory previously asserted.
- 1984. Ex parte communications by prosecutor.
- 1985. Miscellaneous particular issues.
- 1986. Sanctions for breach of prosecutorial duties.

2. DISCLOSURE OF INFORMATION.

- 1990. In general.
- 1991. Constitutional obligations regarding disclosure.
- 1992. Materiality and probable effect of information in general.
- 1993. Particular types of information subject to disclosure.
- 1994. — In general.
- 1995. — Diligence on part of accused; availability of information.
- 1996. — Grand jury proceedings.
- 1997. — Evidence incriminating others.
- 1998. — Statements of witnesses or prospective witnesses.
- 1999. — Impeaching evidence.
- 2000. — Test results; demonstrative and documentary evidence.
- 2001. — Other particular issues.
- 2002. Information within knowledge of prosecution.
- 2003. — In general.
- 2004. — Duty to locate information.
- 2005. — Responsibility of and for police and other agencies.
- 2006. Request for disclosure; procedure.
- 2007. Time and manner of required disclosure.
- 2008. Sanctions for failure to disclose.

3. DESTRUCTION OR LOSS OF INFORMATION.

- 2010. In general.
- 2011. Excuse or justification for destruction or loss.
- 2012. Sanctions for destruction or loss.

4. NONPRODUCTION OF WITNESS OR RENDERING WITNESS UNAVAILABLE.

- 2020. In general.

5. PRESENTATION OF EVIDENCE.

- 2030. In general.
- 2031. Use of improper evidence.
- 2032. Use of false or perjured testimony.
- 2033. — In general.
- 2034. — What constitutes perjured testimony.
- 2035. — Obligation to caution witness about possible perjury.
- 2036. — Duty to correct false or perjured testimony.
- 2037. — Effect of perjured testimony; remedy.
- 2038. Calling witnesses; compelling assertion of privilege.
- 2039. Examination of witnesses other than accused.
- 2040. — In general.
- 2041. — Cross-examination.
- 2042. — Impeachment.
- 2043. Examination of accused.
- 2044. — In general.
- 2045. — Cross-examination.
- 2046. — Impeachment.
- 2047. Introducing evidence of other misconduct by accused.
- 2048. Use of exhibits and demonstrative evidence.
- 2049. Repetition; violations of prior ruling.

(E) DUTIES AND OBLIGATIONS OF DEFENSE ATTORNEYS.

- 2050. In general.
- 2051. Presentation of evidence and examination of witnesses.

(F) ARGUMENTS AND STATEMENTS BY COUNSEL.

- 2060. In general.
- 2061. Control of argument by court.
- 2062. — In general.
- 2063. — Discretion of court in controlling argument.
- 2064. — Form and manner of argument; number of counsel.
- 2065. — Reargument or reopening of argument.
- 2066. — Other particular issues.

110. CRIMINAL LAW**XXXI. COUNSEL.(Cont'd)**

- 2067. Scope and effect of opening statement.
- 2068. — In general.
- 2069. — For prosecution.
- 2070. — For defense.
- 2071. Scope of and effect of summing up.
- 2072. — In general.
- 2073. — For prosecution.
- 2074. — For defense.
- 2075. Limiting scope or time of argument.
- 2076. Statements as to facts and arguments.
- 2077. — In general.
- 2078. — Stating or reading proceedings.
- 2079. — Exhibits and illustrations.
- 2080. — Authorities on subject involved.
- 2081. — Rhetorical questions by counsel during argument.
- 2082. — Religious appeals.
- 2083. Demonstrative conduct by counsel.
- 2084. Statements regarding applicable law.
- 2085. — In general.
- 2086. — In particular prosecutions.
- 2087. Matters not within issues.
- 2088. Matters not sustained by evidence.
- 2089. — In general.
- 2090. — Theory of case.
- 2091. — Personal knowledge, opinion, or belief of counsel.
- 2092. — Evidence excluded.
- 2093. Comments on evidence or witnesses.
- 2094. — In general.
- 2095. — Statement of evidence.
- 2096. — Comments regarding statements or declarations by accused.
- 2097. — Evidence admitted without objection.
- 2098. — Credibility and character of witnesses; bolstering.
 - (1). In general.
 - (2). Credibility of accused.
 - (3). Credibility of victim.
 - (4). Credibility of expert witness.
 - (5). Credibility of other witnesses.
- 2099. Comments shifting or misstating burden of proof.
- 2100. — In general.
- 2101. — In particular prosecutions.
- 2102. Inferences from and effect of evidence.
- 2103. — In general.

XXXI. COUNSEL.(Cont'd)

- 2104. — Abortion and birth control.
- 2105. — Arson.
- 2106. — Assault and battery.
- 2107. — Burglary and trespass.
- 2108. — Civil rights offenses.
- 2109. — Conspiracy, racketeering, and money laundering.
- 2110. — Counterfeiting and forgery.
- 2111. — Controlled substances.
- 2112. — Disorderly conduct and breach of the peace.
- 2113. — Escape.
- 2114. — Extortion, threats, stalking, and harassment.
- 2115. — False pretenses and fraud.
- 2116. — Gambling and gaming.
- 2117. — Homicide and assault with intent to kill.
- 2118. — Infants, minors, and children, offenses specific to.
- 2119. — Kidnapping and false imprisonment.
- 2120. — Larceny, embezzlement, and receiving stolen property.
- 2121. — Liquor offenses.
- 2122. — Motor vehicle offenses.
- 2123. — Obscenity and lewdness.
- 2124. — Obstructing justice, bribery, and perjury.
- 2125. — Robbery.
- 2126. — Sex offenses, incest, and prostitution.
- 2127. — Tax and internal revenue offenses.
- 2128. — Weapons and explosives.
- 2129. Comments on accused's silence or failure to testify.
- 2130. — In general.
- 2131. — Comments on silence of accused prior to trial.
 - (1). In general.
 - (2). Silence prior to arrest.
 - (3). Silence during or subsequent to arrest.
- 2132. — Comments on failure of accused to testify.
 - (1). In general.
 - (2). In particular prosecutions.
 - (3). Indirect references.

110. CRIMINAL LAW**XXXI. COUNSEL.(Cont'd)**

- (4). Reference to pretrial silence as comment on failure to testify.
- (5). Reference to evidence as contradicted as comment on failure to testify.
- (6). Reference to failure to produce witness or evidence as comment on failure to testify.
- 2133. Comment on assertion of privilege by witness other than accused.
- 2134. Comments on failure to present evidence or witnesses.
- 2135. — In general.
- 2136. — Comments by prosecution on failure of accused to present evidence.
- 2137. — Comments by defense on failure of prosecution to present evidence.
- 2138. Evidence of character of accused.
- 2139. Expression of opinion as to guilt of accused.
- 2140. Comments on character or conduct.
- 2141. — In general.
- 2142. — Character, conduct, or appearance of prosecutor.
- 2143. — Character, conduct, or appearance of accused.
- 2144. — Comments on other misconduct by accused.
- 2145. Appeals to sympathy or prejudice.
- 2146. — In general.
- 2147. — Abusive language.
- 2148. — Comments regarding character of victim.
- 2149. — Comments on character of offense charged.
- 2150. — Comments on frequency of offenses, and appeals for law enforcement.
- 2151. — Putting jurors in place of victim; "golden rule" arguments.
- 2152. — Attacks on accused.
- 2153. — Attacks on opposing counsel.
- 2154. — Future dangerousness of accused.
- 2155. — Appeals to fears of jury.
- 2156. — Appeals to racial or other prejudice.
- 2157. Comments to jurors as to duties and obligations.
- 2158. Guilt phase arguments as to potential sentence or punishment.

XXXI. COUNSEL.(Cont'd)

- 2159. — In general.
- 2160. — In particular prosecutions.
- 2161. Sentencing phase arguments.
- 2162. — In general.
- 2163. — In particular prosecutions.
- 2164. Rebuttal argument; responsive statements and remarks.
- 2165. — In general.
- 2166. — Opening statement.
- 2167. — Summing up.
- 2168. — Stating or reading proceedings.
- 2169. — Exhibits and illustrations.
- 2170. — Authorities on subject involved.
- 2171. — Statements regarding applicable law.
- 2172. — Matters not within issues.
- 2173. — Matters not sustained by evidence.
- 2174. — Comments on evidence or witnesses.
- 2175. — Inferences from and effect of evidence.
- 2176. — Comments on accused's silence or failure to testify.
- 2177. — Comments on failure to present evidence.
- 2178. — Expression of opinion as to guilt of accused.
- 2179. — Comments on character or conduct.
- 2180. — Appeals to sympathy or prejudice.
- 2181. — Instructions to jurors as to duties and obligations.
- 2182. — Comments regarding potential punishment.
- 2183. Evidence to rebut statements.
- 2184. Objections, motions, and waiver.
- 2185. — In general.
- 2186. — Necessity.
- 2187. — Time of making.
- 2188. — Sufficiency.
- 2189. — Necessity of request for correction.
- 2190. Withdrawal or correction.
- 2191. Action of court in response to comments or conduct.
- 2192. — In general.
- 2193. — Opening statement.
- 2194. — Presentation of evidence.
- 2195. — Summing up.

111H. CURRENCY REGULATION**XXXI. COUNSEL.**(Cont'd)

- 2196. — Stating or reading proceedings.
- 2197. — Statements regarding applicable law.
- 2198. — Matters not within issues.
- 2199. — Matters not sustained by evidence.
- 2200. — Comments on evidence or witnesses.
- 2201. — Inferences from and effect of evidence.
- 2202. — Comments on accused's silence or failure to testify.
- 2203. — Comments on failure of accused to present evidence.
- 2204. — Expressions as to guilt of accused.
- 2205. — Comments on character or conduct.
- 2206. — Comments on other misconduct by accused.
- 2207. — Appeals to sympathy or prejudice.
- 2208. — Responsive statements and remarks.
- 2209. — Guilt phase arguments as to potential sentence or punishment.
- 2210. — Sentencing phase arguments.

111. CROPS**SUBJECTS INCLUDED**

Annual products of the soil while unsevered therefrom, growing spontaneously or by cultivation, immature or ripe

Nature and incidents of rights of property therein in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agriculture, promotion in general and liens, see **AGRICULTURE**

Attachment, liability of crops to, see **CREDITORS' REMEDIES**

Contracts and conveyances relating to crops, see **CHATTEL MORTGAGES, SALES** and other specific topics

Execution, liability of crops to, see **CREDITORS' REMEDIES**

Particular estates in land, rights and liabilities incident to, see **LANDLORD AND TENANT, LIFE ESTATES, REMAINDERS** and other specific topics

Shares, renting on, see **LANDLORD AND TENANT**

1. Nature of property.
2. Ownership in general.
3. Contracts.
4. Effect of sale or conveyance of land.
5. — In general.
6. — Reservation of growing crops.
7. Effect of severance.
8. Offenses.

111H. CURRENCY REGULATION**SUBJECTS INCLUDED**

Power of Congress to establish and regulate money and legal currency

Gold, silver, notes, certificates, and other items or securities intended to circulate as money or currency

Particular activities and their regulation, by the laws of the federal government or of the states, in connection with money and currency, including—

Bulk cash smuggling

Currency reporting requirements

Illegally structuring currency transactions to evade reporting requirements

Monetary transactions in criminally derived property

Money laundering

Criminal and civil liabilities and proceedings under such laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conspiracy, see **CONSPIRACY**

Counterfeiting, see **COUNTERFEITING**

Federal Reserve System, see **FINANCE, BANKING, AND CREDIT VI**

Fiscal powers of Congress, see **UNITED STATES I(G)**

111H. CURRENCY REGULATION**Power of Congress—**

To fix the standard of weights and measures, see **WEIGHTS AND MEASURES**

To spend, borrow, and appropriate money, see **UNITED STATES I(G)**

Racketeering, see **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**

Unlicensed money transmitting businesses, see **FINANCE, BANKING, AND CREDIT** ¶61, 1725

What constitutes legal tender, see **PAYMENT** ¶10-12

1. In general.
2. Gold and silver; bullion.
3. Federal Reserve notes.
4. Money laundering.
5. Monetary transactions in unlawfully derived property.
6. Records of and reports on monetary transactions.
7. — In general.
8. — Duties of financial institutions.
9. Criminal proceedings.
10. — In general.
11. — Indictment or information.
12. — Evidence in general.
13. — Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Gold and silver; bullion.
 - (3). Money laundering.
 - (4). Monetary transactions in unlawfully derived property.
 - (5). Records of and reports on monetary transactions.
14. — Instructions.
15. — Questions of law or fact.
16. — Sentence and punishment.
17. Civil liability.

113. CUSTOMS AND USAGES**SUBJECTS INCLUDED**

Established methods of dealing in particular occupations or trades, or in transactions of a particular kind, or in particular localities

Their operation and effect as to contracts

Pleading such customs and usages, and evidence relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Crime, custom affecting, see **CRIMINAL LAW** and specific criminal topics

Insurance, custom affecting, see **INSURANCE**

Law, general or local customs having force of, see **COMMON LAW** and specific topics

Negligence, course of usage or practice affecting, see **NEGLIGENCE, AUTOMOBILES** and other specific topics

Persons in particular relationships or occupations, customs affecting, see **FINANCE, BANKING, AND CREDIT, LABOR AND EMPLOYMENT**, and other specific topics

Torts, course of dealing or practice affecting, see **TRESPASS** and other specific topics

1. Nature and grounds in general.
2. Requisites and validity.
3. — In general.
4. — Duration and establishment.
5. — Generality.
6. — Certainty and uniformity.
7. — Reasonableness.
8. — Legality.
9. Application and operation.
- 9.1. — In general.
10. — Scope and effect in general.
11. — Creation and existence of contract.
12. — Knowledge of parties.
 - (1). In general.
 - (2). Presumption of knowledge.
13. — Reference to or incorporation of custom in making contract.
14. — Exclusion by terms of contract.
15. — Explanation of contract.
 - (1). In general.
 - (2). Construction of particular words and phrases.
16. — Adding to terms of contract.
17. — Varying terms of contract.
18. Pleading.
19. Evidence as to existence of custom.
 - (.5). In general.
 - (1). Burden of proof.

114. CUSTOMS DUTIES

- (2). Admissibility.
- (3). Weight and sufficiency.
- 20. Evidence as to knowledge of custom.
- 21. Questions for jury.
- 22. Instructions.

114. CUSTOMS DUTIES

SUBJECTS INCLUDED

Taxes on imports or exports
 Power to impose such duties, and constitutional and statutory provisions relating thereto
 Property subject to duty, classification thereof under provisions of customs laws, and rate and amount of duties
 Entry, storage and appraisal of goods, liens for collection and payment of duties, drawbacks, and rights and remedies of importers or owners of goods
 Import regulations
 Forfeitures, penalties and other punishments for violations of customs laws
 Trade adjustment assistance

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Excise duties and other internal taxes, see INTERNAL REVENUE
 Narcotic drugs, importation, see CONTROLLED SUBSTANCES

- I. VALIDITY, CONSTRUCTION, AND OPERATION OF CUSTOMS LAWS IN GENERAL, ¶1-22.5.
- II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT, ¶23-52.
- III. COLLECTION DISTRICTS AND OFFICERS, ¶53-60.5.
- IV. ENTRY OF GOODS, ¶61-70.
- V. APPRAISAL, ¶71-80.
- VI. LIQUIDATION AND RELIQUIDATION, ¶81.
- VII. PROTESTS AND REVIEW, ¶82-85.
- VIII. BONDS AND WAREHOUSES, ¶86-91.
- IX. FEES AND CHARGES, ¶92.

- X. PAYMENT, ¶93-95.
- XI. COLLECTION, ¶96-98.
- XII. REFUND, ¶99.
- XIII. DRAWBACK, ¶100.
- XIV. RECOVERY OF DUTIES PAID, ¶101-119.
- XV. VIOLATIONS OF CUSTOMS LAWS, ¶120-136.

I. VALIDITY, CONSTRUCTION, AND OPERATION OF CUSTOMS LAWS IN GENERAL.

- 1. Power to impose duties on imports or exports.
- 2. Constitutionality of customs laws.
- 3. Tariff acts in general.
- 4. Changes in tariffs.
- 5. — In general.
- 6. — Amendment or repeal of provisions.
- 7. — Time of taking effect.
- 8. — Effect as to goods in course of importation.
- 9. — Effect as to goods in bond.
- 10. Treaty provisions.
- 10.1. — In general.
- 11. — Reciprocity.
- 12. General rules of construction.
- 13. Trade with island possessions and canal zone.
- 14. Importation within meaning of customs laws.
- 15. Accrual of right to duty.
- 16. Construction as to classification of goods.
- 17. — In general.
- 18. — Commercial designation.
- 19. — Use of article.
- 20. — Articles imported in separate parts.
- 21. Discriminating duties.
- 21.5. Countervailing or dumping duties.
See also ¶72, *below*.
 - (1). In general.
 - (2). Bounties or grants.
 - (3). Foreign market value, fair value, and adjustment.
 - (4). Injury, material and negative.
 - (5). Proceedings.
- 22. Prohibition of importation.
- 22.1. Foreign trade zones.
- 22.5. Relief from injury caused by import competition.

114. CUSTOMS DUTIES**II. GOODS SUBJECT TO DUTY,
RATE, AND AMOUNT.**

- 23. Nature of goods subject to duty in general.
- 24. Chemicals, oils, and paints.
 - (1). In general.
 - (2). Medicinal preparations.
 - (3). Preparations of coal tar.
 - (4). Paints, colors, or varnishes.
 - (5). Oils.
- 25. Earths, earthenware, and glassware.
 - (1). In general.
 - (2). Brick and tile.
 - (3). Pumice stone.
 - (4). Clays or earths.
 - (5). Earthenware and china.
 - (6). Carbons.
 - (7). Glass and glassware in general.
 - (8). Bottles containing merchandise.
 - (9). Marble and stone.
- 26. Metals and manufactures thereof.
 - (1). In general.
 - (2). Manufactures.
 - (3). Articles not specially provided for.
- 27. Wood and manufactures thereof.
- 28. Sugar.
- 29. Tobacco and manufactures thereof.
- 30. Agricultural products and provisions.
 - (1). In general.
 - (2). Farm and field products.
 - (3). Fish.
 - (4). Fruits.
 - (5). Wool grease.
 - (6). Miscellaneous products.
- 31. Spirits, wines, and other beverages.
- 32. Cotton manufactures.
 - (1). In general.
 - (2). Wearing apparel.
 - (3). Handkerchiefs.
 - (4). Cords and thread.
 - (5). Trimmings, bindings, and tapes.
 - (6). Manufactures not specially provided for.
- 33. Flax, hemp, and jute, and manufactures thereof.
 - (1). In general.
 - (2). Hemp unmanufactured.
 - (3). Woven fabrics of flax.
 - (4). Laces and lace trimmed articles.

**II. GOODS SUBJECT TO DUTY, RATE,
AND AMOUNT.(Cont'd)**

- (5). Twine, thread, and tape.
- (6). Braids.
- (7). Embroidered articles.
- (8). Handkerchiefs not embroidered.
- (9). Crash, canvas, and burlaps.
- (10). Bags and bagging.
- (11). Rugs, carpets, and linoleum.
- 34. Wool and manufactures of wool.
 - (1). In general.
 - (2). Wool unmanufactured.
 - (3). Wool on the skin.
 - (4). Waste and rags.
 - (5). Manufactures of wool in general.
 - (6). Dress goods.
 - (7). Ready-made clothing and wearing apparel.
 - (8). Bindings, gorings, and webbings.
 - (9). Carpets and rugs.
 - (10). Miscellaneous manufactures of wool.
 - (11). Goat hair and manufactures thereof.
- 35. Silks and silk goods.
 - (1). In general.
 - (2). Thread and twist.
 - (3). Manufactures of silk in general.
 - (4). Woven fabrics in general.
 - (5). Jacquard figured silks.
 - (6). Pile fabrics.
 - (7). Wearing apparel.
 - (8). Trimmings or galloons.
 - (9). Laces and nets.
 - (10). Cords.
- 35.2. Manufactures of rayon or other synthetic textile.
- 36. Pulp, papers, and books.
 - (1). In general.
 - (2). Paper stock.
 - (3). Printing paper.
 - (4). Handmade paper.
 - (5). Surface coated and parchment paper.
 - (6). Tissue, crepe, and filtering papers.
 - (7). Fancy paper.
 - (8). Lithographic prints and engravings.

114. CUSTOMS DUTIES**II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT.(Cont'd)**

- (9). Printed matter, books, and periodicals.
- (10). Scrapbooks and albums.
- (11). Photographs.
- (12). Envelopes.
- (13). Manufactures of paper.
- (14). Paper not otherwise provided for.
- 37. Sundries.
 - (.5). In general.
 - (1). Artificial or ornamental grains, leaves or flowers.
 - (2). Beads or spangles.
 - (3). Bone.
 - (4). Coal.
 - (5). Feathers.
 - (6). Furs and skins.
 - (7). Haircloth.
 - (8). India rubber and manufactures.
 - (9). Jewelry, pearls, and precious stones, and imitations thereof.
 - (10). Leather and manufactures thereof.
 - (11). Mother-of-pearl.
 - (12). Paintings.
 - (13). Smokers' articles.
 - (14). Statuary.
 - (15). Toys.
 - (16). Waste.
 - (17). Miscellaneous products and manufactures.
- 38. Free list.
 - (.5). In general.
 - (1). Importations for religious, scientific, or educational purposes.
 - (2). Personal and household effects of persons arriving in United States.
 - (3). Collections of antiquities.
 - (4). Asphaltum.
 - (5). Chemicals, oils, and paints.
 - (6). Earths, earthenware, and glassware.
 - (7). Metals and manufactures thereof.
 - (8). Wood and manufactures thereof.
 - (9). Animals, agricultural products, and provisions.
 - (10). Wool.

II. GOODS SUBJECT TO DUTY, RATE, AND AMOUNT.(Cont'd)

- (11). Silks and silk goods.
- (12). Books and other publications.
- (13). Sundries.
- 39. Nonenumerated articles.
- 40. — In general.
- 41. — Raw or unmanufactured articles.
- 42. — Partly manufactured articles.
- 43. — Manufactured articles.
- 44. — Similitude to articles enumerated in general.
- 45. — Similitude to two or more enumerated articles.
- 46. Reciprocity provisions.
- 47. Packages and coverings.
- 48. Exported goods reimported.
- 49. Importation in bond.
- 49.1. — In general.
- 50. — Materials for vessels for foreign account or trade.
- 51. — Ores or metals imported for smelting or refining.
- 52. Evidence as to classification.

III. COLLECTION DISTRICTS AND OFFICERS.

- 53. Authority of Secretary of Treasury in general.
- 54. Customs officers in general.
- 55. Collectors.
- 56. Surveyors.
- 57. Appraisers.
- 58. General appraisers.
- 59. Merchant appraisers.
- 60. Inspectors and other subordinate officers.
- 60.5. Customs brokers.

IV. ENTRY OF GOODS.

- 61. Arrival and report of vessel.
- 62. Manifests.
- 63. Entry in general.
- 64. Invoices.
- 65. Declarations and statements accompanying invoices.
- 66. Entry without invoice.
- 67. Personal effects of passengers.
- 68. Entry of articles as exempt from duty.
- 69. Permit to land.
- 70. Unlading.

114. CUSTOMS DUTIES**V. APPRAISAL.**

- 71. Appraisal.
- 72. — In general.
Countervailing and dumping duties, see §21.5, above.
- 73. — Examination of goods.
- 74. — Determination of quantity of goods.
- 75. — Valuation of goods.
 - (1). In general.
 - (2). United States selling price or value.
 - (3). Market value; foreign value.
 - (4). Cost of production; constructed value.
 - (5). Sale for export; export value.
 - (6). Particular parts or products.
 - (7). Evidence.
- 76. — Value of foreign money.
- 77. — Additions to entered value, and additional duties.
- 78. — Deductions and allowances.
- 79. — Conclusiveness and effect.
- 80. Reappraisal and revision.

VI. LIQUIDATION AND RELIQUIDATION.

- 81. In general.

VII. PROTESTS AND REVIEW.

- 82. Protests.
- 83. Appeal to Secretary of Treasury.
- 84. Court of International Trade (formerly Customs Court) and proceedings therein.
 - (1). In general.
Establishment and organization of Court of International Trade, see FEDERAL COURTS §2005.
 - (2). Proceedings in general.
 - (3). Time for instituting proceedings.
 - (4). Parties.
 - (5). Discovery and depositions.
 - (6). Scope of inquiry or review.
 - (7). Evidence.
 - (8). Determination, judgment, and relief; summary judgment.
 - (8.1). — In general.
 - (9). — Conclusiveness; stare decisis and law of the case.
- 85. Court of Appeals for the Federal Circuit (formerly Court of Customs and Patent Appeals) and proceedings therein.
 - (5). In general.

VII. PROTESTS AND REVIEW.(Cont'd)

- (1). Decisions and questions reviewable, parties, and persons entitled.
- (2). Jurisdiction of courts.
- (3). Mode of review.
- (4). Necessity, sufficiency, operation, and effect of protest.
- (5). Time of taking proceedings.
- (6). Return of appraisers.
- (7). Assignment or statement of errors and briefs.
- (8). Additional proofs and trial of cause anew.
- (9). Presumptions and burden of proof.
- (10). Discretion of boards or officers.
- (11). Questions of fact, findings, and decision.
- (12). Harmless error.
- (13). Determination and disposition of cause.
- (14). Costs.

VIII. BONDS AND WAREHOUSES.

- 86. Bonds for duties.
- 87. Bonded warehouses.
- 88. Deposit of goods in warehouse.
- 89. Custody and disposition of goods deposited in warehouse.
- 90. Transportation in bond.
- 91. Withdrawal from bond.

IX. FEES AND CHARGES.

- 92. In general.

X. PAYMENT.

- 93. Obligation to pay.
- 94. Payment in general.
- 95. Payment under protest.

XI. COLLECTION.

- 96. Actions for duties.
- 97. Lien for duties and enforcement thereof.
- 98. Lien of carrier and collection of carrier's charges.

XII. REFUND.

- 99. In general.

114. CUSTOMS DUTIES**XIII. DRAWBACK.**

100. In general.

XIV. RECOVERY OF DUTIES PAID.

- 101. Right of action in general.
- 102. Statutory provisions.
- 103. Conditions precedent.
- 104. — In general.
- 105. — Protest.
- 106. — Appeal.
- 107. Defenses.
- 108. Persons entitled to sue.
- 109. Officers and persons liable.
- 110. Jurisdiction and venue.
- 111. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 112. Pleading.
- 113. Evidence.
- 114. Amount of recovery.
- 115. Recovery of interest.
- 116. Trial.
- 117. Execution and enforcement of judgment.
- 118. Appeal and error.
- 119. Costs.

XV. VIOLATIONS OF CUSTOMS LAWS.

- 120. Nature and elements of offenses in general.
- 120.1. — In general.
- 121. — Construction and operation of penal statutory provisions.
- 122. — Criminal intent.
- 123. — Criminal act or omission.
- 124. Offenses by vessels, their masters, or crews, or other carriers.
- 125. Offenses by owners or others in regard to importation of goods.
- 126. Searches and seizures.
 - (1). In general.
 - (2). Grounds or cause for stop, search, or seizure.
 - (3). Particular objects or products.
 - (3.1). — In general.
 - (4). — Drugs and narcotics.
 - (5). Time and distance factors; check-points.
 - (6). Vessels, crew, and cargo.
 - (7). Airports and airplanes.
 - (8). Mail.

XV. VIOLATIONS OF CUSTOMS LAWS.(Cont'd)

- (9). Scope and nature; successive or secondary searches.
 - (9.1). — In general.
- (10). — Personal, skin, or strip searches; pat-down.
- 127. Resistance to or interference with officers.
- 128. Offenses by officers.
- 129. Penalties and actions therefor.
- 130. Forfeitures.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Property subject.
 - (4). Grounds.
 - (4.1). — In general.
 - (5). — Involuntary entry.
 - (6). — Knowledge or intent.
 - (7). — Unloading without permit or report.
 - (8). — Failure of passenger to declare dutiable merchandise.
 - (9). — Absence or insufficiency of manifest.
 - (10). — False invoices or entries.
 - (11). — Importation of liquor or other contraband.
 - (12). Rights of third persons.
- 131. Custody and disposition of property seized or forfeited.
- 132. Remission or release of forfeitures.
- 133. Proceedings for enforcement of forfeitures.
 - (1). In general.
 - (2). Jurisdiction.
 - (3). Limitations.
See also LIMITATION OF ACTIONS.
 - (4). Parties.
 - (5). Pleading.
 - (6). Evidence.
 - (7). Trial and reference.
 - (8). Judgment.
 - (9). New trial.
 - (10). Review.
- 134. Criminal prosecutions.
- 135. Disposition of proceeds of penalties, forfeitures, and fines.
- 136. Rewards.

115. DAMAGES**115. DAMAGES****SUBJECTS INCLUDED**

Pecuniary compensation, indemnity or satisfaction allowed by law for injuries by the unlawful act or default of another

Nature and grounds of recovery thereof in general

Rights to substantial or nominal damages, to immediate, consequential, remote or prospective damages, and to compensatory or exemplary damages

Penalties and liquidated damages and measure of damages for breach of contract in general

Measure of damages for torts in general

Interest as an element of damages

What amounts are inadequate or excessive as awards of damages

Proceedings relating to recovery and assessment of damages in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Correction of errors in and review of awards of damages, see NEW TRIAL, APPEAL AND ERROR, FEDERAL CIVIL PROCEDURE, and FEDERAL COURTS

Death, damages for, see DEATH

Exemplary damages for particular torts, see AUTOMOBILES and other specific topics

Expenses of litigation awarded as costs rather than damages, see COSTS

Frivolous or vexatious appeal, damages for, see COSTS

Grounds of recovery of damages, and causes of action, see ACTION and other specific topics

Legal process, damages from wrongful use or abuse, see PROCESS, CREDITORS' REMEDIES, and other specific topics

Particular classes of contracts or of injuries to person, property, reputation, etc., measure of damages, see specific topics

Proximate and remote causes of injury, distinctions between, see NEGLIGENCE, AUTOMOBILES and other specific topics

I. NATURE AND GROUNDS IN GENERAL, ¶1-7.

II. NOMINAL DAMAGES, ¶8-14.

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES, ¶15-73.

(A) DIRECT OR REMOTE, CONTINGENT, OR PROSPECTIVE CONSEQUENCES OR LOSSES, ¶15-57.61.

1. IN GENERAL, ¶15-46.10.

2. MENTAL SUFFERING AND EMOTIONAL DISTRESS, ¶57-57.61.

(B) AGGRAVATION, MITIGATION, AND REDUCTION OF LOSS, ¶58-65.

(C) INTEREST, ¶66-69.

(D) EXPENSES OF LITIGATION, ¶70-73.

IV. LIQUIDATED DAMAGES AND PENALTIES, ¶74-86.

V. EXEMPLARY DAMAGES, ¶87-94.10.

VI. MEASURE OF DAMAGES, ¶95-126.

(A) INJURIES TO THE PERSON, ¶95-102.

(B) INJURIES TO PROPERTY, ¶103-116.

(C) BREACH OF CONTRACT, ¶117-126.

VII. AMOUNT AWARDED, ¶127.1-140.7.

(A) IN GENERAL, ¶127.1-127.6.

(B) INJURIES TO THE PERSON, ¶127.7-136.

(C) INJURIES TO PROPERTY, ¶137-139.

(D) BREACH OF CONTRACT, ¶139.5-140.

(E) MENTAL SUFFERING AND EMOTIONAL DISTRESS, ¶140.5-140.7.

VIII. PLEADING, ¶141-162.

IX. EVIDENCE, ¶163-192.

X. PROCEEDINGS FOR ASSESSMENT, ¶193-224.

XI. COMPUTATION AND AMOUNT, ¶225-226.

XII. DOUBLE AND TREBLE DAMAGES, ¶227.

XIII. REMISSION OF EXCESS, ¶228.

I. NATURE AND GROUNDS IN GENERAL

1. Nature and theory of pecuniary reparation.

2. What law governs.

3. Injuries for which pecuniary reparation may be made.

4. Presumptions as to damage from injury.

5. General and special damage.

115. DAMAGES**I. NATURE AND GROUNDS
IN GENERAL.**(Cont'd)

- 6. Certainty as to amount or extent of damage.
- 7. Right to damages as right of property.

II. NOMINAL DAMAGES.

- 8. Nature and theory of award.
- 9. Award irrespective of actual damage.
- 10. Nominal or substantial damages.
- 11. — In general.
- 12. — Extent of damage not shown.
- 13. — Damage not pecuniary.
- 14. Amount of nominal damages.

**III. GROUNDS AND SUBJECTS OF
COMPENSATORY DAMAGES.****(A) DIRECT OR REMOTE, CONTINGENT, OR
PROSPECTIVE CONSEQUENCES OR
LOSSES.****1. IN GENERAL.**

- 15. Nature and theory of compensation.
- 16. Direct or indirect consequences.
- 17. Proximate or remote consequences.
- 18. — In general.
- 19. — Intervening cause of damage.
- 20. Natural and probable consequences of torts.
- 21. Natural and probable consequences of breaches of contract.
- 22. — In general.
- 23. — Under circumstances within contemplation of parties.
- 24. Contingent and possible consequences.
- 25. Prospective and anticipated consequences.
- 26. — In general.
- 27. — Completed or continuing tort.
- 28. — Breach of entire contract.
- 29. — Total or partial breach of continuing contract.
- 30. Elements of compensation in general.
- 31. Physical suffering and inconvenience.
- 32. — In general.
- 33. — Aggravation of previous injury, disease, or disability.
- 34. — Aggravation of injury by disease or other cause.
- 35. Pecuniary losses.
- 36. — In general.

**III. GROUNDS AND SUBJECTS OF COM-
PENSATORY DAMAGES.**(Cont'd)

- 37. — Loss of earnings or services.
- 38. — Impairment of earning capacity.
- 39. — Loss of or injury to property.
- 40. — Loss of profits.
 - (1). In general.
 - (2). Breach of contract.
 - (3). Interruption or destruction of business.
 - (4). Preventing or delaying performance of contract with third person.
- 41. Expenses.
- 42. — In general.
- 43. — Medical treatment and care of person injured.
- 44. — Injury to property.
- 45. — Breach of contract.
- 46. — Necessity of actual payment or legal liability.
- 46.10. Motive or intent of wrongdoer as affecting award.

**2. MENTAL SUFFERING AND
EMOTIONAL DISTRESS.**

Excludes mental or emotional injury as element in case of wrongful death, see DEATH, or invasion of privacy, see TORTS, and other particular torts to which the element is peculiar, see CIVIL RIGHTS, DEAD BODIES, FALSE IMPRISONMENT, LIBEL AND SLANDER, MALICIOUS PROSECUTION, NUISANCE and TELECOMMUNICATIONS. Custodial interference, see CHILD CUSTODY §990. Pursuant to family and medical leave statutes, see LABOR AND EMPLOYMENT.

- 57.1. In general.
- 57.2. Statutory and constitutional provisions.
- 57.3. What law governs.
- 57.4. Preemption.
- 57.5. — In general.
- 57.6. — Labor and employment.
- 57.7. Nature of conduct in general.
- 57.8. Nature of injury or threat in general.
- 57.9. — In general.
- 57.10. — Physical illness, impact, or injury; zone of danger.
- 57.11. Humiliation, insults, and indignities in general.
- 57.12. Particular cases in general.
- 57.13. Negligent infliction of emotional distress.
- 57.14. — In general.

115. DAMAGES**III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)**

- 57.15. — Nature of conduct.
- 57.16. — Nature of injury or threat.
 - (1). In general.
 - (2). Physical illness, impact, or injury; zone of danger.
- 57.17. — Humiliation, insults, and indignities.
- 57.18. — Particular cases.
- 57.19. Intentional or reckless infliction of emotional distress; outrage.
- 57.20. — In general.
- 57.21. — Elements in general.
- 57.22. — Nature of conduct.
- 57.23. — Nature of injury or threat.
 - (1). In general.
 - (2). Physical illness, impact, or injury; zone of danger.
- 57.24. — Humiliation, insults, and indignities.
- 57.25. — Particular cases.
 - (1). In general.
 - (2). Government; criminal justice.
 - (3). Media and publications.
 - (4). Health care.
 - (5). Education.
- 57.26. Injury or threat to another; bystanders.
- 57.27. — In general.
- 57.28. — In utero and childbirth.
- 57.29. — Other particular cases.
- 57.30. Fear of developing disease.
- 57.31. — In general.
- 57.32. — Exposure; physical illness, impact, or injury.
- 57.33. — Cancer.
- 57.34. — AIDS/HIV.
- 57.35. — Other particular cases.
- 57.36. Injury to property or property rights.
- 57.37. — In general.
- 57.38. — Pets and other animals.
- 57.39. — Other particular cases.
- 57.40. Debt collection practices.
- 57.41. Breach of contract or warranty.
- 57.42. — In general.
- 57.43. — Particular cases.
- 57.44. Insurance practices.
- 57.45. — In general.

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)

- 57.46. — Claims and settlement; bad faith.
- 57.47. — Workers' compensation.
- 57.48. Persons liable.
- 57.49. Privilege or immunity; exercise of legal rights.
- 57.50. Labor and employment.
- 57.51. — In general.
- 57.52. — Termination in general.
- 57.53. — Persons liable in general.
- 57.54. — Employers' statutory liability.
- 57.55. — Sex and gender.
- 57.56. — Race and national origin.
- 57.57. — Handicap, disability, or illness.
- 57.58. — Other particular cases.
- 57.59. — Privilege or immunity; exercise of legal rights.
- 57.60. Recovery for resulting physical injury.
- 57.61. Clergy and religious societies.

(B) AGGRAVATION, MITIGATION, AND REDUCTION OF LOSS.

- 58. Matter of aggravation.
- 59. Matter of mitigation; collateral source rule in general.
- 60. Benefits incident to injury.
- 61. Expenses incurred by wrongdoer.
- 62. Duty of person injured to prevent or reduce damage.
 - (1). In general.
 - (2). Personal injuries.
 - (3). Injuries to property.
 - (4). Breach of contract.
- 63. Reparation by wrongdoer.
- 64. Reduction of loss by insurance.
- 65. Estoppel or waiver affecting amount of damages.

(C) INTEREST.

- 66. Interest.
 - 66.1. — In general.
- 67. — Element of damages in general.
- 68. — Breaches of contract.
- 69. — Torts.

(D) EXPENSES OF LITIGATION.

- 70. Attorney fees, costs, and expenses of litigation.

115. DAMAGES

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES.(Cont'd)

- 70.1. — In general.
- 71. — Elements of damages in general.
- 71.5. — Under special statutory provisions.
- 72. — Litigation between person injured and wrongdoer.
- 73. — Litigation with third persons.

IV. LIQUIDATED DAMAGES AND PENALTIES.

Sales of goods, see SALES ¶2309.

- 74. Nature as compensation for actual damage.
- 75. Construction of stipulations.
- 76. — In general.
- 77. — Intent of parties.
- 78. — Form and language of instrument.
 - (1). In general.
 - (2). Express declaration as to nature of provision.
 - (3). Contract not to engage in particular business.
 - (4). Stipulation against delay in performance.
 - (5). Default in payment of money.
 - (6). Breach of contract of sale or lease.

Sales of goods, see SALES ¶2309.

- (7). Nonperformance of any one of several acts.
- 79. — Certainty as to amount of actual damage.
 - (1). In general.
 - (2). Some provisions capable of determination.
 - (3). Contract not to engage in particular business.
 - (4). Stipulation against delay in performance.
 - (5). Breach of contract of sale or lease.

Sales of goods, see SALES ¶2309.

- 80. — Proportion of sum stipulated to actual debt or damage.
 - (1). In general.
 - (2). Stipulation against delay in performance.
 - (3). Breach of contract of sale or lease.

Sales of goods, see SALES ¶2309.

- 81. — Deposit to be forfeited on breach.

IV. LIQUIDATED DAMAGES AND PENALTIES.(Cont'd)

- 82. Alternative stipulations as provisions for liquidated damages or penalties.
- 83. Questions for jury.
- 84. Operation and effect of stipulations.
- 85. — In general.
- 86. — Total or partial breach.

V. EXEMPLARY DAMAGES.

- 87. Nature and theory of damages additional to compensation.
 - (1). In general.
 - (2). Necessity of actual damage.
- 88. Injuries for which exemplary damages may be awarded.
- 89. — In general.
 - (1). In general.
 - (2). Breach of contract.
- 90. — Acts punishable as crimes.
- 91.5. Grounds for exemplary damages.
 - (1). In general.
 - (2). Good faith; mistake.
 - (3). Particular cases in general.
 - (4). Products liability.
- 92. Persons for or against whom exemplary damages may be awarded.
- 93. Effect of death of wrongdoer.
- 94. Measure and amount of exemplary damages.
 - 94.1. — In general.
 - 94.2. — Nature of act or conduct.
 - 94.3. — Wealth of defendant.
 - 94.4. — Deterrence.
 - 94.5. — Costs of litigation.
 - 94.6. — Actual damage or compensatory damages; relationship and ratio.
 - 94.7. — Discretion as to amount of damages.
 - 94.8. — Constitutional limitations on amount in general.
 - 94.9. — Statutory provisions.
 - (1). In general.
 - (2). Validity.
 - (3). Retroactivity.
 - 94.10. — Amount awarded in particular cases.
 - (1). In general.
 - (2). Products liability.

115. DAMAGES**VI. MEASURE OF DAMAGES.***Measure of exemplary damages, see §94.***(A) INJURIES TO THE PERSON.**

- 95. Mode of estimating damages in general.
- 96. Discretion as to amount of damages.
- 97. Physical suffering and inconvenience in general.
- 98. Permanent injuries.
- 99. Loss of earnings, services, or consortium.
- 100. Impairment of earning capacity.
- 101. Expenses.
- 102. Mental suffering and emotional distress.

(B) INJURIES TO PROPERTY.

- 103. Mode of estimating damages in general.
- 104. Discretion as to amount of damages.
- 105. Destruction or loss of property.
- 106. Detention or loss of use of property.
- 107. Injuries to real property.
- 108. — In general.
- 109. — Temporary injuries.
- 110. — Permanent and continuing injuries.
- 111. — Buildings or other improvements.
- 112. — Growing crops, grass, shrubbery, or trees.
- 113. Injuries to personal property.
- 114. Injuries affecting limited or special rights or interests.
- 115. Injuries affecting rights of action or remedies.
- 116. Expenses.

(C) BREACH OF CONTRACT.

- 117. Mode of estimating damages in general.
- 118. Effect of provisions of contract.
- 119. Discretion as to amount of damages.
- 120. Failure to perform in general.
 - (1). In general.
 - (2). Work, labor, and services in general.
 - (3). Buildings and other improvements.
 - (4). Printing, publishing, and advertising.
 - (5). Board, lodging, and support.
 - (6). Sharing expenses or profits and losses.

VI. MEASURE OF DAMAGES.(Cont'd)

- (7). Contracts conferring exclusive privileges or restricting competition.

- 121. Partial performance.
- 122. Delay in performance.
- 123. Defects in performance.
- 124. Prevention or obstruction of performance.
 - (1). In general.
 - (2). Value of work performed or materials furnished.
 - (3). Loss of profits and expenses incurred.
 - (4). Difference between contract price and cost of performance.
- 125. Failure to pay money.
- 126. Failure to deliver property.

VII. AMOUNT AWARDED.**(A) IN GENERAL.**

- 127.1. In general.
- 127.2. Inadequate damages in general.
- 127.3. Excessive damages in general.
- 127.4. Statutory limitations on amount.
- 127.5. — In general.
- 127.6. — Validity.

(B) INJURIES TO THE PERSON.

- 127.7. In general.
- 127.8. Inadequate damages in general.
- 127.9. Excessive damages in general.
- 127.10. Temporary or permanent nature of injury in general.
- 127.11. Internal injuries in general.
- 127.12. Head and neck injuries in general; mental impairment.
- 127.13. — In general.
- 127.14. — Mouth and jaw injuries.
- 127.15. — Brain injuries in general; mental impairment.
- 127.16. Eye injuries and loss of vision.
- 127.17. Loss of hearing.
- 127.18. Arm, hand, wrist, and shoulder injuries.
- 127.19. — In general.
- 127.20. — Loss of function in general.
- 127.21. — Fractures, sprains, and connective tissue injuries.

115. DAMAGES**VII. AMOUNT AWARDED.(Cont'd)**

- 127.22. — Loss of finger.
- 127.23. — Loss of hand.
- 127.24. — Loss of arm.
- 127.25. Leg, foot, knee, and hip injuries.
- 127.26. — In general.
- 127.27. — Loss of function in general.
- 127.28. — Fractures, sprains, and connective tissue injuries.
- 127.29. — Loss of toe.
- 127.30. — Loss of foot.
- 127.31. — Loss of leg.
- 127.32. Back and spinal injuries in general.
- 127.33. — In general.
- 127.34. — Fractures, sprains, and connective tissue injuries.
- 127.35. — Disc injuries.
- 127.36. Injuries to the nervous system and paralysis.
- 127.37. — In general.
- 127.38. — Arms and the upper body.
- 127.39. — Legs and the lower body.
- 127.40. — Quadriplegia and total paralysis.
- 127.41. Injuries to sexual organs and function.
- 127.42. Injuries to the fetus and miscarriage.
- 127.43. Burns, scars, and skin injuries.
- 127.44. Multiple injuries.
- 127.45. Loss of earnings.
- 127.46. — In general.
- 127.47. — Internal injuries in general.
- 127.48. — Head and neck injuries in general; mental impairment.
- 127.49. — Eye injuries and loss of vision.
- 127.50. — Loss of hearing.
- 127.51. — Arm, hand, wrist, and shoulder injuries.
- 127.52. — Leg, foot, knee, and hip injuries.
- 127.53. — Back and spinal injuries in general.
- 127.54. — Injuries to the nervous system and paralysis.
- 127.55. — Burns, scars, and skin injuries.
- 127.56. — Multiple injuries.
- 127.57. Impairment of earning capacity.
- 127.58. — In general.
- 127.59. — Internal injuries in general.
- 127.60. — Head and neck injuries in general; mental impairment.

VII. AMOUNT AWARDED.(Cont'd)

- 127.61. — Eye injuries and loss of vision.
- 127.62. — Loss of hearing.
- 127.63. — Arm, hand, wrist, and shoulder injuries.
- 127.64. — Leg, foot, knee, and hip injuries.
- 127.65. — Back and spinal injuries in general.
- 127.66. — Injuries to the nervous system and paralysis.
- 127.67. — Burns, scars, and skin injuries.
- 127.68. — Multiple injuries.
- 127.69. Expenses of, and loss of services performed by, injured person.
- 127.70. — In general.
- 127.71. — Medical treatment and custodial care.
 - (1). In general.
 - (2). Future expenses.
- 127.72. Loss of consortium, services, or earnings arising out of injury to another.
- 127.73. — In general.
- 127.74. — Husband and wife.
- 127.75. — Parent and child.

(C) INJURIES TO PROPERTY.

- 137. In general.
- 138. Real property.
- 139. Personal property.

(D) BREACH OF CONTRACT.

- 139.5. In general.
- 140. Particular cases.

(E) MENTAL SUFFERING AND EMOTIONAL DISTRESS.

- 140.5. In general.
- 140.7. Particular cases.

VIII. PLEADING.

- 141. Allegations as to damage in general.
- 142. General or special damage.
- 143. Personal injuries and physical suffering.
- 144. Loss of earnings, services, or consortium.
- 145. Impairment of earning capacity.
- 146. Loss of or damage to property.
- 147. Loss of profits.
- 148. Expenses.

115. DAMAGES**VIII. PLEADING.(Cont'd)**

- 149. Mental suffering and emotional distress.
- 150. Stipulations as to liquidated damages, and penalties.
- 151. Grounds for exemplary damages.
- 152. Grounds for double or treble damages.
- 153. Allegations as to amount of damage.
- 154. Defenses in general.
- 155. Matter of mitigation.
- 156. Issues, proof, and variance.
- 157. — In general.
 - (1). In general.
 - (2). Aggravation or mitigation of damages.
 - (3). Liquidated damages and penalties.
 - (4). Interest on amount of recovery.
 - (5). Exemplary damages.
 - (6). Special damages in general.
- 158. — Personal injuries and physical suffering.
 - (.5). In general.
 - (1). Extent of injury in general.
 - (2). Consequences of injury in general.
 - (3). Extent of direct and consequential injuries to women.
 - (4). Extent of direct and consequential injuries to brain, nervous system, or senses.
 - (5). Aggravation of pre-existing injury or disease.
 - (6). Mode and incidents of treatment of injury.
 - (7). Permanent or future injuries.
- 159. — Pecuniary losses.
 - (1). In general.
 - (2). Loss of earnings or services.
 - (3). Impairment of earning capacity.
 - (4). Loss of profits.
 - (5). Injuries to property.
 - (6). Breach of contract.
 - (7). Amount of damages.
 - (8). Pleading and proof as to value.
- 160. — Expenses.
- 161. — Mental suffering and emotional distress.
- 162. Defects and objections and waiver thereof.

IX. EVIDENCE.

- 163. Presumptions and burden of proof.
 - (.5). In general.
 - (1). Necessity of proof as to damages in general.
 - (2). Mitigation of damages and reduction of loss.
 - (3). Liquidated damages and penalties.
 - (4). Amount of damages.
- 164. Admissibility.
- 165. — In general.
- 166. — Personal injuries and physical suffering.
 - (1). In general.
 - (2). Probable effect of injuries.
- 167. — Expectancy of life of person injured.
- 168. — Health and physical condition of person injured.
 - (.5). In general.
 - (1). Conditions preceding injury.
 - (2). Subsequent physical condition.
- 169. — Character and habits of person injured.
- 170. — Domestic relations of person injured.
- 171. — Pecuniary condition of person injured.
- 172. — Loss of earnings, services, or consortium.
 - (1). In general.
 - (2). Loss of services of wife or child.
- 173. — Impairment of earning capacity.
 - (1). In general.
 - (2). Trade or business forming basis for determination of earning capacity.
- 174. — Loss of or damage to property.
 - (1). In general.
 - (2). Injuries to animals.
 - (3). Injuries to land and to crops, trees, and improvements thereon.
- 175. — Breach of contract.
- 176. — Loss of profits.
- 177. — Expenses.
- 178. — Mental suffering and emotional distress.
- 179. — Intent, malice, or motive of defendant.

115. DAMAGES**IX. EVIDENCE.**(Cont'd)

- 180. — Character of defendant.
- 181. — Pecuniary condition of defendant.
- 182. — Aggravation, mitigation, and reduction of loss.
- 183. Weight and sufficiency.
- 184. — In general.
- 185. — Personal injuries and physical suffering.
 - (1). In general.
 - (2). Permanent character of injury.
 - (3). Disease resulting from injury.
- 186. — Loss of earnings, services, or consortium.
- 187. — Impairment of earning capacity.
- 188. — Loss of or damage to property.
 - (5). In general.
 - (1). Extent of damage in general.
 - (2). Value of property.
 - (3). Consequences of injury.
- 189. — Breach of contract in general.
- 189.5. — Punitive damages.
- 190. — Loss of profits.
- 191. — Expenses.
- 192. — Mental suffering and emotional distress.

X. PROCEEDINGS FOR ASSESSMENT.

- 193. Inquest on default or interlocutory judgment.
 - 193.1. — In general.
- 194. — Nature and form of proceeding.
- 195. — Entry of default or judgment.
- 196. — Time for assessing damages.
- 197. — Writ of inquiry.
- 198. — Assessment by jury.
- 199. — Assessment by court without jury.
- 200. — Assessment by clerk or other officer.
- 201. — Reference for assessment.
- 202. — Notice to defendant.
- 203. — Scope of issues and questions considered.
- 204. — Rights of parties in general.
- 205. Assessment at trial of issues in general.
- 206. Physical or mental examination of person injured.
 - (5). In general.

X. PROCEEDINGS FOR ASSESSMENT.(Cont'd)

- (1). Power and duty of court to require examination.
- (2). Necessity for examination and grounds of objection.
- (3). Successive examinations.
- (4). Time of application.
- (5). Application and proceedings thereon.
- (6). Persons making examination.
- (7). Mode of examination.
- (8). Refusal to submit to examination.
- 207. Reception of evidence as to damages.
- 208. Questions for jury.
 - (1). In general.
 - (2). Physical suffering and inconvenience resulting from injuries.
 - (3). Permanent character of injuries and future suffering.
 - (4). Loss of earnings, services, or consortium and impairment of earning capacity.
 - (5). Expenses.
 - (6). Mental suffering and emotional distress.
 - (7). Aggravation, mitigation, and reduction of loss.
 - (8). Exemplary damages.
 - (9). Interest as element of damages.
- 209. Instructions.
- 210. — In general.
 - (1). In general.
 - (2). Limiting recovery to amount claimed or proved.
 - (3). Apportionment of damages between coplaintiffs.
 - (4). Interest as element of damages.
- 211. — Nominal or substantial damages.
- 212. — Mode of estimating compensatory damages in general.
- 213. — Aggravation of damages.
- 214. — Mitigation or reduction of damages.
- 215. — Exemplary damages.
 - (1). In general.
 - (2). Sufficiency of pleading and proof.
 - (3). Amount and mode of estimation.
- 216. — Measure of damages for injuries to the person.

115. DAMAGES**X. PROCEEDINGS FOR ASSESSMENT.(Cont'd)**

- (1). In general.
- (2). Sufficiency of pleadings and proof in general.
- (3). Instructions authorizing double recovery.
- (4). Physical suffering and inconvenience resulting from injuries.
- (5). Expectancy of life of person injured.
- (6). Permanent injuries.
- (7). Future pain and suffering.
- (8). Loss of earnings, services, or consortium, and impairment of earning capacity.
- (9). Expenses.
- (10). Mental suffering and emotional distress.
- 217. — Measure of damages for injuries to property.
- 218. — Measure of damages for breach of contract.
- 219. Verdict and findings.
- 219.1. — In general.
- 220. — General verdict.
- 221. — Special interrogatories and findings by jury.
 - (1). In general.
 - (2). Questions to be submitted.
 - (2.1). — In general.
 - (3). — Workers' compensation cases.
 - (4). Requests for special findings.
 - (5). Preparation and form of interrogatories or findings.
 - (5.1). — In general.
 - (6). — Conformity to issues; assumption of facts.
 - (7). Sufficiency of verdict or findings.
 - (8). Construction and operation.
- 222. — Findings by court or referee.
- 222.5. Operation and effect of inquest or assessment.
- 223. Objections and exceptions to inquest or assessment.
- 224. Setting aside inquest or assessment.

XI. COMPUTATION AND AMOUNT.

- 225. Time to which damages may be recovered.
- 226. Computation of amount.

XII. DOUBLE AND TREBLE DAMAGES.

- 227. In general.

XIII. REMISSION OF EXCESS.

- 228. In general.

116. DEAD BODIES**SUBJECTS INCLUDED**

Personal rights, duties and liabilities of relatives and representatives of one deceased in respect of the possession and disposition, by burial or otherwise, of the body

Offenses relating to disposal of dead bodies

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Cemeteries, regulation and property rights, see CEMETERIES

Decedent's estates, liabilities of, see EXECUTORS AND ADMINISTRATORS

Health, regulations for protection of, see HEALTH

Inquests as to cause of death, see CORONERS

- 1. Right of possession and disposition in general.
- 2. Burial.
- 3. — In general.
- 4. — Determination of place.
- 5. — Removal from place of former burial; injunction.
- 6. — Liabilities for expenses.
- 7. Offenses.
- 8. Criminal prosecutions.
- 9. Civil liabilities.

117. DEATH**117. DEATH****SUBJECTS INCLUDED**

Presumptions and proof as to death and survivorship in general

Actions for causing death

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Effect of death, and proceedings founded thereon, see **CONTRACTS, DESCENT AND DISTRIBUTION, EXECUTORS AND ADMINISTRATORS, ABATEMENT AND REVIVAL, JUDGMENT** and other specific topics

Evidence of death, sufficiency for particular purposes, see **DESCENT AND DISTRIBUTION** and other specific topics

Intoxicants, actions for damages from death caused by, see **INTOXICATING LIQUORS**

Negligence and wrongful acts causing death as grounds of actions for damages, see **CARRIERS, LABOR AND EMPLOYMENT, NEGLIGENCE** and other specific topics

I. EVIDENCE OF DEATH, ¶1-4.**II. EVIDENCE OF SURVIVORSHIP, ¶5-6.****III. ACTIONS FOR CAUSING DEATH, ¶7-109.****(A) RIGHT OF ACTION AND DEFENSES, ¶7-33.****(B) JURISDICTION, ¶34-35.****(C) VENUE, ¶36.****(D) LIMITATIONS, ¶37-39.****(E) PARTIES, ¶40-44.****(F) PLEADING, ¶45-57.****(G) EVIDENCE, ¶58-77.****(H) DAMAGES OR COMPENSATION, ¶78-101.****(I) TRIAL, ¶102-106.****(J) JUDGMENT, ¶107.****(K) REVIEW, ¶108.****(L) COSTS, ¶109.****I. EVIDENCE OF DEATH.**

1. Presumption as to continuance of life.

2. Presumption as to death from absence.

(1). In general.

(2). Time of death.

(3). Matters rebutting presumptions.

I. EVIDENCE OF DEATH.(Cont'd)

3. Admissibility of evidence as to death.

4. Weight and sufficiency of evidence as to death.

II. EVIDENCE OF SURVIVORSHIP.

5. Presumptions as to survivorship.

6. Evidence as to survivorship.

III. ACTIONS FOR CAUSING DEATH.**(A) RIGHT OF ACTION AND DEFENSES.**

7. Nature and form of remedy.

8. What law governs.

8.5. Preemption.

9. Constitutional and statutory provisions.

10. Survival of right of action of person injured.

11. Creation of new cause of action.

12. Grounds of action.

13. — In general.

14. — Nature of act or omission causing death.

(1). In general.

(2). Willful or wanton acts and gross negligence.

15. — Right of action of person injured.

16. — Instantaneous death.

17. — Proximate cause of death.

18. — Loss or injury resulting from death.

(1). In general.

(2). Loss by parent of services of child.

(3). Dependency on decedent for support.

19. Conditions precedent.

20. Defenses.

21. — In general.

22. — Negligence of fellow servant of deceased.

23. — Contributory negligence of deceased.

24. — Contributory negligence of plaintiff or beneficiary.

25. — Satisfaction or release.

26. — Pendency of other action.

27. — Former recovery.

28. Abatement or survival on death of party.

28.1. — In general.

29. — Death of plaintiff or beneficiary.

30. — Death of defendant.

117. DEATH**III. ACTIONS FOR CAUSING DEATH.(Cont'd)**

31. Persons entitled to sue.
 - (1). In general.
 - (2). Nonresidents and aliens.
 - (3). Personal representatives.
 - (3.1). — In general.
 - (4). — Foreign administrator.
 - (5). Heirs and next of kin.
 - (6). Surviving husband or wife.
 - (7). Parent.
 - (8). Child or grandchild.
32. Persons for whose benefit suit may be maintained.
33. Persons liable.

(B) JURISDICTION.

34. Jurisdiction of cause of action.
 - 34.1. — In general.
35. — Actions under laws of other state or foreign country.

(C) VENUE.

36. Venue.

(D) LIMITATIONS.

37. Application of general statutes of limitations.
See also LIMITATION OF ACTIONS.
38. Special limitations.
39. Computation of period of limitation.

(E) PARTIES.

40. Plaintiffs.
 41. — In general.
 42. — Joinder.
43. Defendants.
44. Intervention, addition, or substitution of parties.

(F) PLEADING.

45. Declaration, complaint, or petition.
 - 45.1. — In general.
46. — Form and requisites in general.
47. — Act or omission causing death.
48. — Statute giving right of action.
49. — Existence of beneficiaries.
 - (1). In general.
 - (2). Pecuniary interest in life of decedent.

III. ACTIONS FOR CAUSING DEATH.(Cont'd)

50. — Appointment of personal representative.
51. — Compliance with statutory requirements.
52. — Damages.
53. Indictment.
54. Plea or answer.
55. Amended and supplemental pleadings.
56. Bill of particulars.
57. Issues, proof, and variance.

(G) EVIDENCE.

58. Presumptions and burden of proof.
 - (1). In general.
 - (2). Necessity of proving loss or injury and the amount thereof.
59. Admissibility of evidence.
60. — In general.
61. — Cause of death.
62. — Dying declarations.
63. — Injuries to deceased.
64. — Loss or injury resulting from death.
65. — Expectancy of life of deceased.
66. — Health and physical condition of deceased.
67. — Earning capacity of deceased.
68. — Character and habits of deceased.
69. — Domestic relations of deceased.
70. — Pecuniary condition of deceased.
71. — Expectancy of life of plaintiff or beneficiary.
72. — Pecuniary condition of plaintiff or beneficiary.
73. — Pecuniary condition of defendant.
74. Weight and sufficiency of evidence.
75. — In general.
76. — Cause of death.
77. — Damages.

(H) DAMAGES OR COMPENSATION.

78. Compensation for loss or injury resulting from death in general.
79. Nominal damages.
80. Elements of compensation.
 81. — In general.
 82. — Suffering of deceased.
 83. — Pecuniary losses to deceased.
 84. — Medical and funeral expenses.

118A. DECLARATORY JUDGMENT**III. ACTIONS FOR CAUSING DEATH.(Cont'd)**

- 85. — Pecuniary loss to plaintiff or beneficiary in general.
 - 86. — Loss of prospective pecuniary benefits.
 - (1). In general.
 - (2). Loss of support and education and moral training.
 - 87. — Loss of services.
 - 88. — Loss of society.
 - 89. — Mental suffering or emotional distress of plaintiff or beneficiary.
 - 90. Aggravation of damages.
 - 91. Mitigation or reduction of damages.
 - 92. Interest on damages.
 - 93. Exemplary damages.
 - 94. Measure and amount awarded.
 - 95. — In general.
 - (1). In general.
 - (2). Prospective earnings and accumulations of deceased.
 - (3). Prospective pecuniary benefits to beneficiaries.
 - (4). Loss of services of child.
 - 96. — Statutory limitations.
 - 97. — Discretion of jury.
 - 98. — Inadequate damages.
 - 99. — Excessive damages.
 - (1). In general.
 - (2). Suffering of deceased.
 - (3). Allowance for death of minor.
 - (4). Allowance to surviving husband, wife or children.
 - (5). Allowance to relatives other than surviving husband, wife, or children.
 - 100. Fines.
 - 101. Apportionment and distribution of amount recovered.
- (I) TRIAL.**
- 102. In general.
 - 103. Questions for jury.
 - (.5). In general.
 - (1). Grounds of action in general.
 - (2). Cause of death.
 - (3). Defenses.
 - (4). Damages.
 - 104. Instructions.

III. ACTIONS FOR CAUSING DEATH.(Cont'd)

- (1). In general.
- (2). Cause of death and negligence.
- (3). Expectancy of life of deceased and beneficiaries.
- (4). Elements of damages.
- (5). Damages for death of minor child.
- (6). Measure and amount awarded.
- 105. Verdict and findings.
- 106. New trial.

(J) JUDGMENT.

- 107. In general.

(K) REVIEW.

- 108. In general.

(L) COSTS.

- 109. In general.

118A. DECLARATORY JUDGMENT**SUBJECTS INCLUDED**

Judgments declaring the rights of parties or expressing the opinion of the court on a question of law without ordering anything to be done

Nature and grounds of such judgments

Subjects of declaratory relief

Actions for declaratory judgment with or without other relief, and procedure therein

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Advisory opinions, and questions submitted by legislature, Governor, or other officer, see CONSTITUTIONAL LAW §2600 et seq., COURTS

Fiduciaries, proceedings for instructions, see EXECUTORS AND ADMINISTRATORS, TRUSTS

Moot, abstract or hypothetical cases generally, see ACTION

Wills, actions to construe not brought under declaratory judgment acts, see WILLS

118A. DECLARATORY JUDGMENT**I. NATURE AND GROUNDS IN GENERAL,** ¶1–80.

(A) IN GENERAL, ¶1–20.

(B) CONSTITUTIONAL AND STATUTORY PROVISIONS, ¶21–40.

(C) OTHER REMEDIES, ¶41–60.

(D) ACTUAL OR JUSTICIABLE CONTROVERSY, ¶61–80.

II. SUBJECTS OF DECLARATORY RELIEF, ¶81–250.

(A) RIGHTS IN GENERAL, ¶81–90.

(B) STATUS AND LEGAL RELATIONS, ¶91–110.

(C) ISSUES AND PROCEDURE, ¶111–120.

(D) CONSTITUTIONS, ¶121.

(E) STATUTES, ¶122–127.

(F) ORDINANCES, ¶128–140.

(G) WRITTEN INSTRUMENTS AND CONTRACTS, ¶141–180.

1. IN GENERAL, ¶141–160.

2. INSURANCE, ¶161–180.

(H) PROPERTY AND CONVEYANCES, ¶181–187.

(I) LIENS AND PRIORITIES, ¶188.

(J) MORTGAGES AND TRUST DEEDS, ¶189–200.

(K) PUBLIC OFFICERS AND AGENCIES, ¶201–230.

(L) PATENTS, ¶231–235.

(M) COPYRIGHTS, ¶236.

(N) TRADEMARKS, ¶237–240.

(O) WILLS, ¶241.

(P) TRUSTS, ¶242.

(Q) DECEDENTS' ESTATES, ¶243.

(R) GUARDIANSHIP, ¶244–250.

III. PROCEEDINGS, ¶251–395.

(A) IN GENERAL, ¶251–270.

(B) JURISDICTION AND VENUE, ¶271–290.

(C) PARTIES, ¶291–310.

(D) PLEADING, ¶311–340.

(E) EVIDENCE, ¶341–360.

(F) HEARING AND DETERMINATION, ¶361–380.

(G) JUDGMENT, ¶381–391.

(H) APPEAL AND ERROR, ¶392–395.

I. NATURE AND GROUNDS IN GENERAL.**(A) IN GENERAL.**

1. Nature and scope of remedy.
2. Object and purpose.
3. Power to render.
4. Right to declaratory relief in general.
5. Discretion of court.
- 5.1. — In general.

I. NATURE AND GROUNDS IN GENERAL.(Cont'd)

6. — Limitation of discretion.
7. Necessity, utility and propriety.
8. Termination or settlement of controversy.
9. Defenses and objections in general.
10. Fact questions.

(B) CONSTITUTIONAL AND STATUTORY PROVISIONS.

21. In general.
22. Validity of statutes.
23. Construction and operation of statutes.
- 23.1. — In general.
24. — Object and purpose of statutes.
25. — Statutes as substantive or procedural.
26. — Liberal or strict construction.

(C) OTHER REMEDIES.

41. Existence and effect in general.
42. Adequacy of other remedy.
43. Alternative, substitute or supplemental remedy.
44. Statutory remedy.
45. Pendency of other action.
46. Anticipation of other action.
47. Questions adjudicated in other action.

(D) ACTUAL OR JUSTICIABLE CONTROVERSY.

61. Necessity.
62. Nature and elements in general.
63. Propriety of judicial determination.
64. Adverse interests or contentions.
65. Moot, abstract or hypothetical questions.
66. Advisory opinions.
67. Accrual of controversy.
68. Future or contingent questions.
69. Remote questions.

II. SUBJECTS OF DECLARATORY RELIEF.**(A) RIGHTS IN GENERAL.**

81. Subjects of relief in general.
82. Rights and liabilities in general.
83. Nonliability.
84. Criminal laws.
85. Workers' compensation.

118A. DECLARATORY JUDGMENT**(B) STATUS AND LEGAL RELATIONS.**

Proceedings to determine United States citizenship, see also ALIENS, IMMIGRATION, AND CITIZENSHIP.

- 91. In general.
- 92. Marital status.
- 92.1. — In general.
- 93. — Validity of foreign divorce.
- 94. Legitimacy and parentage.
- 95. Professions, businesses or occupations.
- 96. Corporations.
- 97. Banks and banking.
- 98. Carriers and public utilities.
- 99. Labor and employment.
- 100. Debtors and creditors.

(C) ISSUES AND PROCEDURE.

- 111. In general.
- 112. Rights and defenses in other actions.
- 113. Remedies.
- 114. Validity and construction of judgments and orders.

(D) CONSTITUTIONS.

- 121. In general.

(E) STATUTES.

- 122. Statutes in general.
- 122.1. — In general.
- 123. — Validity of statutes and proposed bills.
- 124. Statutes relating to particular subjects.
- 124.1. — In general.
- 125. — Corporations, carriers and public utilities.
- 126. — Employees, labor relations and unemployment compensation.
- 127. — Licenses and taxes.

(F) ORDINANCES.

- 128. Ordinances in general.
- 129. Zoning ordinances.

(G) WRITTEN INSTRUMENTS AND CONTRACTS.**1. IN GENERAL.**

- 141. Written instruments in general.
- 142. Contracts in general.
- 143. Particular contracts.
- 143.1. — In general.
- 144. — Arbitration agreements.

II. SUBJECTS OF DECLARATORY RELIEF. (Cont'd)

- 145. — Employment and personal service contracts.
- 146. — Guaranty and suretyship contracts.
- 147. — Labor agreements.
- 148. — Land contracts.
- 149. — Marriage settlements and separation agreements.

2. INSURANCE.

- 161. In general.
- 162. Fire insurance.
- 163. Life and accident insurance.
- 163.1. — In general.
- 164. — Disability provisions.
- 165. Liability or indemnity insurance in general.
- 166. Automobile liability insurance.
- 166.1. — In general.
- 167. — Invalidity, termination or breach of condition of policy.
- 168. — Coverage of policy.
- 169. — Duty to defend action against insured.
- 170. — Accrual of controversy.
- 171. — Pendency of other action.
- 172. Employer's liability and workers' compensation insurance.

(H) PROPERTY AND CONVEYANCES.

- 181. Title and property rights in general.
- 182. Particular estates and interests.
- 183. Validity and construction of deeds.
- 184. Covenants and restrictions.
- 185. Easements and water rights.
- 186. Leases.
- 187. Mineral leases and grants.

(I) LIENS AND PRIORITIES.

- 188. In general.

(J) MORTGAGES AND TRUST DEEDS.

- 189. In general.

(K) PUBLIC OFFICERS AND AGENCIES.

- 201. Officers and official acts in general.
- 202. Eligibility and right to office.
- 203. Federal officers and boards.
- 204. State officers and boards.

118A. DECLARATORY JUDGMENT**II. SUBJECTS OF DECLARATORY
RELIEF (Cont'd)**

- 205. Labor boards and agencies.
- 206. Public service commissions.
- 207. Public employees.
- 207.1. — In general.
- 208. — Classification and salaries.
- 209. Counties and municipalities and their officers.
- 210. Education.
- 211. Bonds.
- 212. Elections.
- 213. Licenses and taxes.
- 213.1. — In general.
- 214. — Liability for tax in general.
- 215. — Sales and use taxes.
- 216. — Levy, assessment, collection, and enforcement.
- 217. — Federal taxes.
- 218. Streets and highways.

(L) PATENTS.

- 231. Patents.
- 231.1. — In general.
- 232. — Validity of patents.
- 233. — Infringement of patents.
- 234. — Claim of infringement as condition precedent.
- 235. — Patent licenses and assignments.

(M) COPYRIGHTS.

- 236. In general.

(N) TRADEMARKS.

- 237. In general.

(O) WILLS.

- 241. In general.

(P) TRUSTS.

- 242. In general.

(Q) DECEDENTS' ESTATES.

- 243. In general.

(R) GUARDIANSHIP.

- 244. In general.

III. PROCEEDINGS.**(A) IN GENERAL.**

- 251. Procedure in general.
- 252. Nature and form.
- 252.1. — In general.
- 253. — Legal or equitable.
- 254. — Other actions distinguished.
- 255. Limitations and laches.
See also LIMITATION OF ACTIONS.
- 256. Process and appearance.
- 257. Service on Attorney General.
- 258. Preliminary injunction or other relief.

(B) JURISDICTION AND VENUE.

- 271. In general.
- 272. Jurisdiction not enlarged.
- 273. Jurisdiction of particular state courts.
- 274. Jurisdiction of federal courts.
- 274.1. — In general.
- 275. — Diversity of citizenship.
- 276. Concurrent and conflicting jurisdiction.

(C) PARTIES.

- 291. Parties in general.
- 292. Interest in subject matter.
- 293. Necessary and indispensable parties.
- 293.1. — In general.
- 294. — Subjects of relief in general.
- 295. — Contracts.
- 296. — Property, conveyances, and incumbrances.
- 297. — Patents.
- 298. — Wills, trusts and estates.
- 299. Proper parties.
- 299.1. — In general.
- 300. — Subjects of relief in general.
- 301. — Contracts.
- 302. Government or officers as parties.
- 302.1. — In general.
- 303. — State or state officers.
- 304. — United States or federal officers.
- 305. Representative or class actions.
- 306. New parties.

(D) PLEADING.

- 311. Pleading in general.
- 312. Complaint, petition or bill.
- 312.1. — In general.
- 313. — Statement of controversy.

119. DEDICATION

III. PROCEEDINGS.(Cont'd)

- 314. — Subjects of relief in general.
- 315. — Statutes and ordinances.
- 316. — Written instruments and contracts in general.
- 317. — Insurance.
- 318. — Property, conveyances and incumbrances.
- 319. — Public officers and agencies.
- 320. — Patents and copyrights.
- 321. — Prayer for relief.
- 322. Answer, counterclaim and reply.
- 323. Counterclaim for declaratory relief in other action.
- 324. Amended and supplemental pleadings.
- 325. Demurrer.
- 326. Motions in general.
- 327. Motion to strike or dismiss complaint, petition or bill.
- 327.1. — In general.
- 328. — Grounds of motion.
- 329. Issues, proof and variance.

(E) EVIDENCE.

- 341. Presumptions and burden of proof.
- 341.1. — In general.
- 342. — Subjects of relief in general.
- 343. — Insurance.
- 344. Admissibility.
- 345. Weight and sufficiency.
- 345.1. — In general.
- 346. — Statutes and ordinances.
- 347. — Contracts.

(F) HEARING AND DETERMINATION.

- 361. Dismissal before hearing.
- 361.1. — In general.
- 362. — Grounds for involuntary dismissal in general.
- 363. — Defects and objections as to parties.
- 364. Mode and conduct in general.
- 365. Scope of inquiry and powers of court.
- 366. Questions and issues to be determined.
- 368. Questions for jury.
- 369. Verdict and findings.

(G) JUDGMENT.

- 381. Nature and essentials of judgment.

III. PROCEEDINGS.(Cont'd)

- 382. Condition of cause.
- 383. Form and requisites of judgment.
- 384. Scope and extent of relief in general.
- 385. Declaratory relief.
- 386. Executory or coercive relief.
- 386.1. — In general.
- 387. — Injunction.
- 388. — Money judgment.
- 389. Dismissal or denial of relief.
- 390. Construction and operation of judgment.
- 391. Supplemental relief.

(H) APPEAL AND ERROR.

- 392. Appeal and error.
- 392.1. — In general.
- 393. — Scope and extent of review in general.
- 394. — Discretion of lower court.
- 395. — Determination and disposition of cause.

119. DEDICATION

SUBJECTS INCLUDED

Giving or devoting real property or easements therein to the use of the public, and acceptance and revocation of such dedication
Nature, requisites, incidents, operation and effect thereof

Evidence relating thereto

Estates, interests or easements created

Rights, duties and liabilities of parties making such dedications and of the public as to the property dedicated

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Abandonment of property, see ABANDONED AND LOST PROPERTY

Easements for quasi-public use created by private grant or reservation, see EASEMENTS

Inventions, dedication to the public of, see PATENTS

119. DEDICATION

Literary works and the like, dedication to the public of, see COPYRIGHTS AND INTELLECTUAL PROPERTY

I. NATURE AND REQUISITES, ¶1-45. II. OPERATION AND EFFECT, ¶46-65.

I. NATURE AND REQUISITES.

1. Nature and essentials in general.
2. Constitutional and statutory provisions.
3. Purpose of dedication.
 - 3.1. — In general.
 4. — Public and charitable uses in general.
 5. — Highways and other public ways.
 6. — Public squares, parks and commons.
 7. — Wharves and landings.
 8. — Schools and educational purposes.
 9. — Churches and religious purposes.
 10. — Cemeteries and burial grounds.
 11. Property subject to dedication.
 12. Title or interest of dedicator.
 13. Capacity or authority to dedicate.
 14. Public or body politic or corporate as grantee.
15. Intent to dedicate.
16. Acts constituting dedication.
 - 16.1. — In general.
 - 16.2. — Construction of improvements of a public nature.
17. — Express conveyance or declaration.
18. — Recitals or descriptions in conveyances or contracts.
 - (1). In general.
 - (2). Sales and descriptions of property with reference to way or other public ground.
19. — Designation in maps or plats, and sale of lots.
 - (1). In general.
 - (2). Designation of use or purpose in general.
 - (3). Undesignated parts of map or plat.
 - (4). Adoption of map or plat.
 - (5). Sale of lands with reference to map, plat, or survey.
 - (6). Sales before opening streets shown on map or plat.
20. — Abandonment to or acquiescence in public use.

I. NATURE AND REQUISITES.(Cont'd)

- (1). In general.
- (2). Knowledge and consent of owner, and nature of use in general.
- (3). Time requisite.
- (4). Use of vacant or uninclosed lands.
- (5). Public use of private ways and improvements.
- (6). Use and maintenance of railroad crossings.
21. Acts or declarations to prevent implied dedication.
22. Statutory dedication.
 - 22.1. — In general.
23. — Form and contents of instrument, map, or plat.
24. — Execution.
25. — Acknowledgment.
26. — Recording.
27. — Curing defects.
28. — Validity as common-law dedication.
29. Revocation or lapse of dedication before acceptance.
30. Acceptance.
 - 30.1. — In general.
31. — Necessity.
32. — Statutory requirements.
33. — Authority to accept.
34. — Time for acceptance.
35. — Official acts or proceedings.
 - (1). In general.
 - (2). Ordinances and resolutions in general.
 - (3). Improvement and repair.
 - (4). Acceptance of part of property dedicated.
 - (5). Acts tending to negative acceptance.
36. — Compliance with conditions.
37. — User by public.
38. Revocation after acceptance.
39. Estoppel to assert or deny dedication.
40. Evidence.
 - 40.1. — In general.
41. — Presumptions and burden of proof as to dedication.
42. — Presumptions and burden of proof as to acceptance.
43. — Admissibility.

120. DEEDS

I. NATURE AND REQUISITES.(Cont'd)

- 44. — Weight and sufficiency.
- 45. Questions for jury.

II. OPERATION AND EFFECT.

- 46. General rules of construction.
- 47. Persons entitled to benefit of dedication.
- 48. Persons bound by dedication.
- 49. Extent of dedication.
- 50. — In general.
- 51. — Width of highways or other public ways.
- 52. Title or right acquired.
- 53. — In general.
- 54. — Statutory dedication.
- 55. Reservations, conditions, and restrictions.
- 56. Use of property.
- 57. — In general.
- 58. — Change of use.
- 59. Rights and liabilities as to control and care of property.
- 59.1. — In general.
- 60. — Public authorities.
- 61. — Abutting owners.
- 62. — Owners of fee or reversion.
- 63. Abandonment or nonuser.
 - (1). In general.
 - (2). Failure to use or improve.
 - (3). Vacation.
- 64. Misuser or diversion.
- 65. Reversion.

120. DEEDS

SUBJECTS INCLUDED

Instruments in writing under seal in general
More particularly, conveyances of real property
Nature, requisites, validity, incidents, construction, operation and effect of such instruments
Evidence relating thereto
Delivery, acceptance and recording or registration thereof

Estates or interests created, exceptions or reservations therefrom, and conditions or restrictions imposed thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Acknowledgment of deeds, necessity and sufficiency, see ACKNOWLEDGMENT
Cancellation and surrender of deeds, see CANCELLATION OF INSTRUMENTS
Compelling execution and delivery of deed, see SPECIFIC PERFORMANCE
Court orders, judgments or decrees, deeds of land sold under, see JUDICIAL SALES and other specific topics
Covenants in deeds, validity, construction and effect, see COVENANTS
Estates created by deeds, and rights of owners thereof, see ESTATES IN PROPERTY, LIFE ESTATES, JOINT TENANCY, REMAINDERS and other specific topics
Estoppel by deed, and operation of covenants to pass title by estoppel, including doctrine of after-acquired title, see ESTOPPEL
Evidence, admissibility and effect of deeds, declarations of parties thereto, and parol or extrinsic evidence to explain, see EVIDENCE
Execution, deeds of lands sold under, see CREDITORS' REMEDIES
Fiduciaries, deeds of lands sold by, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD and other specific topics
Fraud as to creditors or subsequent purchasers, see FRAUDULENT CONVEYANCES
Frauds, statute of, requirements of, see FRAUDS, STATUTE OF
Government, grants of land by, see PUBLIC LANDS, MINES AND MINERALS
Lost deeds, establishment of, see LOST INSTRUMENTS
Particular classes of persons, deeds by or to, see ALIENS, IMMIGRATION, AND CITIZENSHIP, MENTAL HEALTH, PARTNERSHIP, CORPORATIONS AND BUSINESS ORGANIZATIONS and other specific topics
Particular personal relations, deeds between persons in, see MARRIAGE AND COHABITATION, EXECUTORS AND AD-

120. DEEDS

MINISTRATORS, ATTORNEY AND CLIENT, and other specific topics

Particular property or easements therein, deeds conveying or affecting, see MINES AND MINERALS, WATER LAW, PARTY WALLS, and other specific topics

Powers, deeds in execution of, see POWERS

Records of deeds, in general and as constructive notice to purchasers, mortgagees and the like, see RECORDS, MORTGAGES AND DEEDS OF TRUST, VENDOR AND PURCHASER

Reformation of deeds, see REFORMATION OF INSTRUMENTS

Seals, sufficiency in general, see SEALS

Security, deeds as, see MORTGAGES AND DEEDS OF TRUST

Signatures, sufficiency in general, see SIGNATURES

Tax deeds, see TAXATION

Trusts, deeds in execution of, see TRUSTS

I. REQUISITES AND VALIDITY, ¶1-78.

(A) NATURE AND ESSENTIALS OF CONVEYANCES IN GENERAL, ¶1-25.

(B) FORM AND CONTENTS OF INSTRUMENTS, ¶26-43.

(C) EXECUTION, ¶44-53.

(D) DELIVERY, ¶54-67.

(E) VALIDITY, ¶68-78.

II. RECORDING AND REGISTRATION, ¶79-88.

III. CONSTRUCTION AND OPERATION, ¶90-183.

(A) GENERAL RULES OF CONSTRUCTION, ¶90-110.

(B) PROPERTY CONVEYED, ¶111-119.

(C) ESTATES AND INTERESTS CREATED, ¶120-136.

(D) EXCEPTIONS, ¶137-140.

(E) RESERVATIONS, ¶141-143.

(F) CONDITIONS, ¶144-169.

(G) RESTRICTIONS, ¶170-176.

(H) LOSS OR RELINQUISHMENT OF RIGHTS, ¶177-184.

IV. PLEADING, ¶185-190.

V. EVIDENCE, ¶191-212.

I. REQUISITES AND VALIDITY.

(A) NATURE AND ESSENTIALS OF CONVEYANCES IN GENERAL.

1. What law governs.

I. REQUISITES AND VALIDITY.(Cont'd)

2. Constitutional and statutory provisions.

3. Nature and requisites of conveyance in general.

4. Conveyances distinguished from other transactions.

5. — In general.

6. — Executory contracts.

7. Property which may be subject of conveyance.

8. Title or interest of grantor.

9. Time of taking effect.

10. Parties.

11. — In general.

12. — Capacity to convey.

13. — Capacity to take.

14. Consideration.

14.1. — In general.

15. — Necessity.

16. — Effect of seal.

17. — Sufficiency.

(1). In general.

(2). Adequacy of consideration.

(3). Natural affection and personal relations.

(4). Support and maintenance.

(5). Past consideration.

18. — Want of consideration.

19. — Failure of consideration.

20. Particular modes of conveyance.

20.1. — In general.

21. — Common-law forms.

22. — Bargain and sale.

23. — Lease and release.

24. — Covenant to stand seized.

25. — Quitclaim.

(B) FORM AND CONTENTS OF INSTRUMENTS.

26. Necessity and sufficiency of writing in general.

28. Forms and parts of deeds of conveyance in general.

29. Statutory forms.

30. Designation and description of parties.

31. — In general.

32. — Blanks.

33. Recitals.

34. — In general.

35. — Consideration and receipt thereof.

120. DEEDS

I. REQUISITES AND VALIDITY.(Cont'd)

- 36. Operative words of conveyance.
- 37. Description of property.
- 37.1. — In general.
- 38. — Certainty in general.
 - (1). In general.
 - (2). Designation by official survey.
 - (3). Designation by metes and bounds.
 - (4). Conveyance of part of tract by quantity.
 - (5). Excepting undesignated part of tract.
 - (6). Designation by source of title.
 - (7). Designation as grantor's residence.
 - (8). Designation as adjoining other property.
- 39. — Blanks.
- 40. — Reference to maps or plats.
- 41. — Reference to other instruments or records.
- 42. — False description.
- 43. Amendment or correction of deed by subsequent instrument.

(C) EXECUTION.

- 44. Mode and requisites in general.
- 45. Signature or subscription.
- 46. Seal.
- 47. Attestation.
- 48. Affixing revenue stamps.
- 49. Partial or defective execution.
- 50. Execution in blank.
- 51. Confirmation or ratification of defective deed.
- 52. Curative statutes.
- 53. Questions for jury.

(D) DELIVERY.

- 54. Necessity.
- 55. Sufficiency.
- 56. — In general.
 - (1). In general.
 - (2). Intent of parties.
 - (3). Necessity of parting with control over instrument.
 - (4). Retention of deed by grantor.
 - (5). Obtaining possession by fraud or without consent of grantor.

I. REQUISITES AND VALIDITY.(Cont'd)

- (6). Delivery after grantor's death.
 - (7). Return to grantor.
- 57. — Co-grantors and co-grantees.
- 58. — Delivery to third person.
 - (1). In general.
 - (2). Delivery to agent, attorney, or relative of grantee.
 - (3). Leaving with conveyancer or officer taking acknowledgment.
 - (4). Necessity of grantor parting with control over deed.
- 59. — Record or delivery for record.
 - (1). In general.
 - (2). Intention.
 - (3). Knowledge or assent of grantee.
 - (4). Retention of deed by grantor after record.
- 60. — Conditional delivery.
- 61. — Deposit for delivery on death of grantor.
- 62. Ratification of unauthorized or defective delivery.
- 63. Acceptance.
- 63.1. — In general.
- 64. — Necessity.
- 65. — Sufficiency.
- 66. Questions for jury.
- 67. Operation and effect.

(E) VALIDITY.

- 68. Capacity and assent of parties in general.
 - (.5). In general.
 - (1). Reality of assent in general.
 - (1.5). Mental capacity in general.
 - (2). Monomania or delusion.
 - (3). Sickness or extreme age.
 - (4). Mental impairment coupled with inadequacy of consideration.
 - (5). Intoxication.
- 69. Mistake.
- 70. Fraud and misrepresentation.
 - (1). In general.
 - (2). Reliance on representation and equal means of knowledge.
 - (3). Representations of opinion or fact.
 - (4). Suppressing truth.
 - (5). Inadequacy of consideration.

120. DEEDS

I. REQUISITES AND VALIDITY.(Cont'd)

- (6). Confidential relations.
- (7). Age and mental weakness.
- (8). Subject-matter of misrepresentations.
- 71. Duress.
- 72. Undue influence.
 - (5). In general.
 - (1). What constitutes in general.
 - (2). Age and infirmity of grantor in general.
 - (3). Confidential or fiduciary relations in general.
 - (4). Deed to relatives in general.
 - (5). Deed to husband or wife.
 - (6). Deed to parent.
 - (7). Deed to child.
- 73. Illegality.
- 74. Estoppel or waiver as to defects or objections.
- 75. Ratification of voidable deed.
- 76. Effect of invalidity.
- 77. Right to contest validity.
- 78. Questions for jury.

II. RECORDING AND REGISTRATION.

- 79. Purpose and scope of requirements in general.
- 80. What law governs.
- 81. Constitutional and statutory provisions.
- 82. Necessity as between parties to instrument.
- 83. Instruments entitled to record.
- 84. Place.
- 85. Time.
- 86. Sufficiency.
- 87. Effect as between parties to instrument.
- 88. Effect of failure to record as between parties to instrument.

III. CONSTRUCTION AND OPERATION.

(A) GENERAL RULES OF CONSTRUCTION.

- 90. Application to deeds in general.
- 91. What law governs.
- 92. Statutory provisions.
- 93. Intention of parties.
- 94. Merger of previous agreements.
- 95. Language of instrument.
- 96. Recitals.

III. CONSTRUCTION AND OPERATION.(Cont'd)

- 97. Repugnant or conflicting parts or clauses.
- 98. Writing and printing.
- 99. Construing instruments together.
- 100. Extrinsic circumstances.
- 101. Construction by parties.
- 102. Construction as to parties.
- 103. — In general.
- 104. — Grantors.
- 105. — Grantees.
- 106. — Representative or official capacity.
- 108. Time of taking effect.
- 109. Evidence to aid construction in general.
- 110. Questions for jury.

(B) PROPERTY CONVEYED.

- 111. Construction in general.
- 112. References to maps, plats, other instruments, or records.
 - (5). In general.
 - (1). Reference to other instruments or records in general.
 - (2). Reference to surveys, maps, and plats, and records thereto.
- 113. Particular words or terms.
- 114. Particular description.
 - (1). In general.
 - (2). Recital as to locality.
 - (3). Additional recitals extending or limiting grant.
 - (4). Quantity of interest conveyed.
 - (5). Specific quantity described as part of larger tract.
- 115. Erroneous description.
- 116. After-acquired property or title.
- 117. Appurtenances.
- 118. Evidence.
- 119. Questions for jury.

(C) ESTATES AND INTERESTS CREATED.

- 120. Creation by deed in general.
- 121. Operation of quitclaim deed.
- 122. Operation of deed in representative or official capacity.
- 123. Particular words or terms.
- 124. Fee simple.
 - (5). In general.
 - (1). Necessity and sufficiency of words of inheritance or perpetuity.

120. DEEDS

III. CONSTRUCTION AND OPERATION.(Cont'd)

- (2). Absence of words of inheritance.
- (3). Limitations inconsistent with grant of fee in general.
- (4). Limitation to heirs of grantee's body.
- 125. Qualified or defeasible fees.
- 126. Conditional fees.
- 127. Estates tail.
 - (1). In general.
 - (2). Conversion into fee simple or other estate under statutory provisions.
- 128. Application of rule in Shelley's Case.
- 129. Life estates.
 - (1). In general.
 - (2). Absence of words of inheritance.
 - (3). Limitations to heirs of grantee's body.
 - (4). Grant to one for life, remainder to children, heirs of the body, heirs, or issue.
- 130. Reversions.
- 131. Remainders.
- 132. — In general.
- 133. — Vested or contingent.
 - (5). In general.
 - (1). Nature and grounds of distinction.
 - (2). Contingency on which estate depends.
 - (3). Opening of vested remainder to let in after-born remaindermen.
 - (4). Divesting of vested estates.
 - (5). Extinguishment of estate.
- 134. Conditional limitations.
- 135. Particular provisions.
- 136. Joint tenancy or tenancy in common.

(D) EXCEPTIONS.

- 137. Nature and creation of exceptions.
- 138. Exceptions and reservations distinguished.
- 139. Validity of exceptions.
- 140. Construction and operation of exceptions.

(E) RESERVATIONS.

- 141. Nature and creation of reservations.
- 142. Validity of reservations.

III. CONSTRUCTION AND OPERATION.(Cont'd)

- 143. Construction and operation of reservations.

(F) CONDITIONS.

- 144. Nature and creation of conditions.
 - (1). In general.
 - (2). Provision for support of grantor.
- 145. Covenant distinguished from condition.
- 146. Validity of conditions.
- 147. — In general.
- 148. — Restraint or derogation of marriage.
- 149. — Restraint of alienation.
- 150. — Use of property.
- 151. — Effect of invalidity.
- 152. Construction and operation of conditions.
 - 153. — In general.
 - 154. — Conditions precedent.
 - 155. — Conditions subsequent.
 - 156. — Persons entitled to benefit of condition or of breach.
 - 157. — Persons entitled or bound to perform condition.
 - 158. — Conditions running with the land.
 - 159. Performance or breach.
 - 160. — In general.
 - 161. — Time for performance.
 - 162. — Sufficiency of performance.
 - 163. — Excuses for nonperformance.
 - 164. — Discharge by impossibility of performance.
 - 165. — Effect of breach.
 - 166. Release or waiver of condition or of forfeiture for breach.
 - 167. Equitable relief from forfeiture.
 - 168. Enforcement of forfeiture.

(G) RESTRICTIONS.

- 170. In general.
- 171. Buildings or other structures or improvements.
 - (1). In general.
 - (2). Dwelling.
 - (3). Distance from street.
- 172. Nuisances and particular occupations.
- 173. Persons entitled to benefit of restrictions.

120. DEEDS

III. CONSTRUCTION AND OPERATION.(Cont'd)

- 174. Persons bound by restrictions.
- 175. Release or waiver of or estoppel to enforce restrictions.
- 176. Enforcement of restrictions.

(H) LOSS OR RELINQUISHMENT OF RIGHTS.

- 177. Revocation, subsequent conveyance, or other acts of grantor.
- 178. Rescission by parties in general.
- 179. Redelivery of deed to grantor.
- 180. Indorsement on deed.
- 181. Destruction, mutilation, or alteration of deed by parties.
- 182. Loss of deed.
- 183. Reconveyance.

IV. PLEADING.

- 185. In general.
- 186. Execution, delivery, and existence.
- 187. Consideration.
- 188. Invalidity.
- 189. Conditions and restrictions.
- 190. Issues, proof, and variance.

V. EVIDENCE.

- 191. Presumptions and burden of proof.
- 192. — In general.
- 193. — Execution, existence, and identity.
- 194. — Delivery.
 - (1). In general.
 - (2). Presumption from possession of deed.
 - (3). Time of delivery.
 - (4). Acceptance.
 - (5). Effect of record or delivery for record.
- 195. — Consideration.
- 196. — Validity.
 - (.5). In general.
 - (1). Capacity and assent of parties in general.
 - (1.5). Mistake.
 - (2). Fraud in general.
 - (3). Undue influence.
 - (4). Duress.
- 197. — Performance or breach of condition.

V. EVIDENCE.(Cont'd)

- 198. Admissibility of evidence.
- 198.1. — In general.
- 199. — Execution, existence, and identity.
- 200. — Delivery.
- 201. — Record or registration.
- 202. — Consideration.
- 203. — Validity.
- 204. — Performance or breach of condition.
- 205. Weight and sufficiency of evidence.
- 206. — In general.
- 207. — Execution, existence, and identity.
- 208. — Delivery.
 - (1). In general.
 - (2). Evidence in connection with possession of grantor.
 - (3). Evidence in connection with possession of grantee.
 - (4). Evidence in connection with recording.
 - (5). Evidence in connection with possession by third person.
 - (6). Acceptance.
 - (7). Time of delivery or taking effect.
- 209. — Record or registration.
- 210. — Consideration.
- 211. — Validity.
 - (.5). In general.
 - (1). Capacity and assent of parties in general.
 - (2). Mistake.
 - (3). Fraud and misrepresentation.
 - (4). Undue influence.
 - (5). Duress.
- 212. — Performance or breach of condition.

122A. DEPOSITS AND ESCROWS

SUBJECTS INCLUDED

Money or other personal property delivered for safekeeping, either with or without compensation, to be redelivered in accordance with the purpose of the deposit

123. DEPOSITS IN COURT

Deeds, bonds, and other obligatory writings, or money or property delivered to a person not a party thereto to be held by him until performance of a specified condition or the happening of a certain contingency and then to be delivered to the grantee or obligee

Rights, duties and liabilities of parties to such deliveries

Depositaries of public moneys and rights, liabilities, and remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bailments in general, see BAILMENT

Court, deposits or payment in, see DEPOSITS IN COURT, TENDER, COSTS

Death of grantor, deposit of deed for delivery on, see DEEDS

Frauds, statute of, escrow delivery as compliance, see FRAUDS, STATUTE OF

Particular occupations, deposits incident to, see FINANCE, BANKING, AND CREDIT, WAREHOUSEMEN

- I. DEPOSITS IN GENERAL, ¶1-10.
- II. CONDITIONAL DEPOSITS OR ESCROWS, ¶11-30.
- III. DEPOSITS OF PUBLIC MONEYS, ¶31-38.

I. DEPOSITS IN GENERAL.

1. Nature and requisites in general.
2. Bonds or other securities.
3. Particular forms of deposits.
4. Rights and liabilities of parties.
5. Actions.

II. CONDITIONAL DEPOSITS OR ESCROWS.

11. Nature and requisites in general.
12. Instruments deliverable in escrow.
13. Depositaries.
14. Delivery to depositary.
15. Construction of escrow agreements in general.
16. Conditions or contingencies.
17. Authority of depositary to deliver.
18. Operation and effect of delivery in escrow.
- 18.1. — In general.
19. — Revocation of agreement.

II. CONDITIONAL DEPOSITS OR ESCROWS.(Cont'd)

20. Performance of conditions or occurrence of contingency.
21. Delivery by depositary.
22. Time when instrument takes effect.
- 22.1. — In general.
23. — Relation back to first delivery.
24. Unauthorized or wrongful delivery by depositary.
- 24.1. — In general.
25. — Ratification of wrongful delivery.
26. Redelivery to depositor.

III. DEPOSITS OF PUBLIC MONEYS.

31. Appointment or designation.
32. Bonds or other securities.
33. Making and effect of deposits.
34. Control and disposition of deposits.
35. Liabilities of depositaries.
36. Actions against depositaries in general.
37. Liabilities on bonds.
38. Offenses.

123. DEPOSITS IN COURT

SUBJECTS INCLUDED

Delivery of money or goods to courts or officers of courts, incident to civil actions, made pursuant to statute, rule or order of court, or consent of parties to the action

Rights and liabilities of the parties in respect of such money or property

Payment or delivery out of court or other disposition thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Decedent's estates, payment of legacies or distributive shares into court, see EXECUTORS AND ADMINISTRATORS

Officers' duties and liabilities, see PUBLIC EMPLOYMENT, CLERKS OF COURTS and other specific topics

Public moneys, depositaries of, see DEPOSITS AND ESCROWS

123. DEPOSITS IN COURT

Security in particular proceedings, deposit of money as, see COSTS, BAIL and other specific topics

Tender, payment of money into court incident to, see TENDER and other specific topics

1. Grounds for permitting or compelling deposit; condition of cause.
2. Application and order for deposit.
3. Deposit with clerk or other officer without authority.
4. Custody and investment of funds in general.
5. Loan of funds under order of court.
6. — In general.
7. — Bonds and other securities.
8. Duties and liabilities of depositaries.
9. Rights and liabilities of parties.
10. Withdrawal or return.
11. Disposition under judgment or order of court.
12. Proceedings for payment or delivery out of court.

124. DESCENT AND DISTRIBUTION

SUBJECTS INCLUDED

Transmission of property, real or personal, by hereditary succession

Right to inherit or share in the division of intestates' estates in general

Liabilities of heirs, next of kin and other distributees

Dower and curtesy interests in deceased spouse's property

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Administration of decedents' estates in general, see EXECUTORS AND ADMINISTRATORS

Community property, disposition and administration after death of spouse, see MARRIAGE AND COHABITATION

Cotenacy, see TENANCY IN COMMON

Disabilities of aliens to inherit, see ALIENS, IMMIGRATION, AND CITIZENSHIP

Election between distributive share and other rights, see WILLS, HOMESTEAD

Escheat of property to state or government on death without heirs, see ESCHEAT

Homestead rights after death of original owner, see HOMESTEAD

Joint tenancy and survivorship, see JOINT TENANCY

Partnership property, administration by surviving partners or statutory partnership administrators, see PARTNERSHIP

Taxation—estate, inheritance and succession taxes, see INTERNAL REVENUE, TAXATION

I. NATURE AND COURSE IN GENERAL, ¶1-19.

II. PERSONS ENTITLED AND THEIR RESPECTIVE SHARES, ¶20-67.9. 25

(A) HEIRS AND NEXT OF KIN, ¶20-51.

(B) SURVIVING HUSBAND OR WIFE, ¶52-67.

(C) NONMARITAL CHILDREN, ¶67.1-67.9. 20

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES, ¶68-157.

(A) NATURE AND ESTABLISHMENT OF RIGHTS IN GENERAL, ¶68-92.

(B) ADVANCEMENTS, ¶93-118.

(C) DEBTS OF INTESTATE AND INCUMBRANCES ON PROPERTY, ¶119-152.

(D) RIGHTS AND REMEDIES OF CREDITORS OF HEIRS AND DISTRIBUTEES, ¶153-157.

IV. DOWER AND CURTESY, ¶158-186.

I. NATURE AND COURSE IN GENERAL.

1. Nature of succession in general.

2. What law governs.
Nonmarital children, see ¶67.2.

3. — In general.

4. — Real property and interests therein.

5. — Personal property.

6. Constitutional and statutory provisions.
Nonmarital children, see ¶67.3.

7. Operation of common law in absence of statute.

124. DESCENT AND DISTRIBUTION

I. NATURE AND COURSE IN GENERAL.(Cont'd)

8. Property subject to descent or distribution.
9. Rule of descent dependent on whether property is personalty or realty.
10. Source of title and seisin of intestate.
11. — In general.
12. — Purchase or descent.
13. — Seisin of lands descended to intestate.
14. — Descent of ancestral or parental lands on failure of issue.
15. — Descent of lands of infant dying unmarried or without issue.
16. — Reversion of gift on death without issue.
17. Descent of remainders, reversions, and executory devises.
18. Fact of death.
19. Fact of intestacy.

II. PERSONS ENTITLED AND THEIR RESPECTIVE SHARES.

(A) HEIRS AND NEXT OF KIN.

20. Kindred.
- 20.1. — In general.
21. — Consanguinity and affinity.
22. — Degrees.
23. Necessary or forced heirs.
24. Order of succession in general.
25. Descendants.
- 25.1. — In general.
26. — Children in general.
Nonmarital children, see §67.4.
27. — Posthumous children.
28. — Issue of children deceased before intestate.
29. — Descent of estates tail.
30. Parents.
31. Stepchildren and stepfather or stepmother.
32. Brothers and sisters and their descendants.
33. — In general.
34. — Issue of brothers or sisters deceased before intestate.
35. — Half blood.
36. Grandparents and remote ascendants.
37. Remote collaterals.
38. — In general.

II. PERSONS ENTITLED AND THEIR RESPECTIVE SHARES.(Cont'd)

39. — Division between paternal and maternal kindred.
 40. — Issue of persons deceased before intestate.
 41. — Half blood.
 42. Shifting inheritance.
 43. Taking per stirpes or per capita.
 44. Operation and effect of will.
 45. — In general.
 46. — Devise to heir or next of kin.
 47. — Pretermitted child or issue of child.
 - (1). In general.
 - (2). Intention to disinherit child.
 - (3). Posthumous children and children born after execution of will.
 48. — Disinheritance.
 49. Disqualification to take.
 - 49.1. — In general.
 50. — Unworthiness or misconduct in general.
 51. — Causing or procuring death of intestate.
- #### (B) SURVIVING HUSBAND OR WIFE.
52. Nature of right in general.
 - (1). In general.
 - (2). Rights of surviving wife in general.
 - (3). Rights of surviving husband in general.
 53. Constitutional and statutory provisions.
 54. Issue of intestate also surviving.
 55. — In general.
 56. — Issue of former marriage.
 57. Failure of issue of intestate.
 58. Failure of issue and of other kindred of intestate.
 59. Property acquired by intestate by gift, devise, or descent.
 60. — In general.
 61. — From former husband or wife.
 62. Estoppel, waiver, or release of right.
 63. Forfeiture of right.
 64. Election.
 - 64.1. — In general.
 65. — Right to and necessity for election.
 66. — Sufficiency.
 67. — Operation and effect.

124. DESCENT AND DISTRIBUTION

(C) NONMARITAL CHILDREN.

Establishment and determination of heirship or right to share in distribution, see §71. Establishment and determination of parentage, see PARENT AND CHILD II, III.

- 67.1. In general.
- 67.2. What law governs.
- 67.3. Statutory provisions.
- 67.4. Inheritance by nonmarital children.
- 67.5. — In general.
- 67.6. — From or through father.
- 67.7. — From or through mother.
- 67.8. Inheritance from or through nonmarital children.
- 67.9. Recognition, acknowledgment, or legitimation.

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.

(A) NATURE AND ESTABLISHMENT OF RIGHTS IN GENERAL.

- 68. Rights of expectant heirs before death of ancestor.
- 69. Conveyances in fraud of heirs.
- 70. Release of expectant share to ancestor.
- 71. Establishment and determination of heirship or right to share in distribution.
Establishment and determination of parentage, see PARENT AND CHILD II, III.
 - (1). In general.
 - (2). Limitation and laches.
 - (3). Parties and pleading.
 - (4). Presumptions and burden of proof.
 - (5). Admissibility of evidence.
 - (6). Sufficiency of evidence.
 - (7). Hearing and determination.
 - (8). Rights and liabilities of third persons.
- 72. Renunciation or release of rights.
- 73. Title of heirs or distributees.
- 74. — In general.
- 75. — Real property and interests therein.
- 76. — Personal property.
- 77. Rights as against administrator.
- 78. Possession and control of property.
- 79. Rents and profits, income, and accumulations.
- 80. Claims of estate against heirs or distributees.
- 81. Mutual rights and liabilities of heirs and distributees.

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.(Cont'd)

- 82. Conveyances and other transactions between heirs and distributees.
- 83. Actions between heirs and distributees.
- 84. Conveyances of property by heirs or distributees.
- 85. Alienation of land inherited from husband by widow under subsequent coverture.
- 86. Assignments of distributive shares.
- 87. Rights and liabilities of purchasers from or assignees of heirs or distributees.
- 88. Actions by heirs or distributees.
- 89. — In general.
- 90. — Relating to real property or interests therein.
 - (.5). In general.
 - (1). Rights of action, nature of remedy, and conditions precedent.
 - (2). Jurisdiction, limitations and laches.
 - (3). Parties.
 - (4). Pleading and evidence.
 - (5). Trial, judgment and relief.
- 91. — Relating to personal property.
 - (.5). In general.
 - (1). Rights of action, nature of remedy, and conditions precedent.
 - (2). Refusal of administrator to sue or collusion with third persons.
 - (3). Jurisdiction, limitations, and laches.
 - (4). Parties.
 - (5). Pleading and evidence.
 - (6). Trial, judgment, and relief.
- 92. Actions against heirs or distributees.

(B) ADVANCEMENTS.

- 93. Nature and essentials in general.
- 94. Constitutional and statutory provisions.
- 95. Property subject of advancement.
- 96. Purposes of advancement.
- 97. Persons between whom advancements may be made.
- 98. Intent to make advancement.
- 99. Mode and sufficiency of transfer.
- 100. Acceptance.
- 101. Change of advancement to gift.

124. DESCENT AND DISTRIBUTION

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.(Cont'd)

- 102. Revocation or change of advancement to loan or debt.
- 102.5. Disposition by will of part of estate.
- 103. Effect of testamentary provisions.
- 104. Operation and effect of advancements in general.
- 105. Persons chargeable with or taking subject to advancements.
- 106. Rights and remedies of parties in general.
- 106.5. Relinquishment of share in estate.
- 107. Election between advancement and share in estate.
- 108. Bringing property into hotchpot for distribution.
- 109. — In general.
- 110. — Proceedings.
- 111. — Operation and effect.
- 112. Valuation.
- 113. Interest.
- 114. Evidence.
- 114.1. — In general.
- 115. — Presumptions and burden of proof.
- 116. — Admissibility.
- 117. — Weight and sufficiency.
- 118. Questions for jury.

(C) DEBTS OF INTESTATE AND INCUMBRANCES ON PROPERTY.

- 119. Nature and grounds of liability of heirs and distributees.
 - (1). In general.
 - (2). Acceptance or renunciation of estate.
- 120. What law governs.
- 121. Constitutional and statutory provisions.
- 122. Liabilities on receipt of personal property or distributive share.
 - 122.1. — In general.
- 123. — Debts enforceable.
- 124. — Extent of liability.
- 125. Liabilities on descent of real property.
 - 125.1. — In general.
- 126. — Debts enforceable against heirs in general.
- 127. — Specialties and debts of record.
- 128. — Covenants of intestate relating to land.

III. RIGHTS AND LIABILITIES OF HEIRS AND DISTRIBUTEES.(Cont'd)

- 129. — Liens and incumbrances created by intestate.
- 130. Liens for debts as against heirs.
- 131. Conveyances and incumbrances by heirs.
 - 131.1. — In general.
- 132. — Effect as to liabilities of heirs.
- 133. — Rights and liabilities of purchasers in general.
- 134. — Bona fide purchasers.
- 135. Apportionment of debts.
- 136. Deductions and set-offs.
- 137. Action against heirs, distributees, or purchasers.
 - 137.1. — In general.
- 138. — Nature and form of remedy.
- 139. — Rights of action.
- 140. — Conditions precedent.
- 141. — Defenses.
- 142. — Jurisdiction and venue.
See also LIMITATION OF ACTIONS.
- 143. — Limitations and laches.
- 144. — Parties.
- 145. — Process and appearance.
- 146. — Pleading.
- 147. — Evidence.
- 148. — Trial.
- 149. — Judgment or decree.
- 150. — Execution and enforcement of judgment.
- 151. — Appeal and error.
- 152. Contribution.

(D) RIGHTS AND REMEDIES OF CREDITORS OF HEIRS AND DISTRIBUTEES.

- 153. Right to subject interests in estate in general.
- 154. Interests or rights which may be subjected.
- 155. Effect of advancement to heir or distributee.
- 156. Effect of indebtedness of heir or distributee to estate.
- 157. Actions and other proceedings by creditors.

IV. DOWER AND CURTESY.

- 158. In general.
- 159. What law governs.
- 160. Property subject.

124. DESCENT AND DISTRIBUTION

IV. DOWER AND CURTESY.(Cont'd)

- 161. — In general.
- 162. — Estates and interests subject.
- 163. — Conveyances before marriage in fraud of spouse.
- 164. Persons entitled.
- 165. Contingent or inchoate rights.
- 166. — In general.
- 167. — Value of right.
- 168. — Remedies for protection of interest.
- 169. — Curtesy initiate.
- 170. Rights and remedies of surviving spouse.
- 171. — In general.
- 172. — Proceedings to establish rights.
- 173. — Rights and liabilities as tenant or possessor.
- 174. Bar, release, or forfeiture of rights.
- 175. — In general.
- 176. — Jointures.
- 177. — Settlements and agreements.
- 178. — Conveyance or other transfer of property.
 - (1). In general.
 - (2). Assignment for benefit of creditors or in insolvency.
 - (3). Judicial sale.
 - (4). Dedication or appropriation of property to public use.
 - (5). Adverse possession.
- 179. — Mortgages and deeds of trust.
- 180. — Estoppel.
- 181. — Elopement, adultery, or other misconduct.
- 182. — Divorce.
- 183. — Restoration of rights.
- 184. Rights and remedies of creditors.
- 185. — In general.
- 186. — Priorities.

125. DETECTIVES AND SECURITY GUARDS

SUBJECTS INCLUDED

Regulation and conduct of the business of detection of crime or other wrongdoing, or

watching and protecting persons or property, by private individuals or corporations

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Labor relations, industrial espionage, see LABOR AND EMPLOYMENT

Municipal police officers, see MUNICIPAL CORPORATIONS

Public officers generally, see PUBLIC EMPLOYMENT

1. Constitutional and statutory provisions.
2. Incorporation and organization of companies or associations.
3. Licenses and regulations.
4. Authority, duty, and liability of private detectives and security providers.
5. Compensation.
6. Offenses.

126. DETINUE

SUBJECTS INCLUDED

Actions for recovery of specific personal property wrongfully detained, or the value thereof as damages where it cannot be delivered, founded on the right of property and not merely on the right of possession

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

Procedure therein, verdict and judgment and enforcement thereof

Alternative or incidental recovery of damages

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages merely for injuring, taking, converting or detaining personal property, actions for, see TRESPASS, CONVERSION AND CIVIL THEFT

Possession merely, actions founded on right of, see REPLEVIN

129. DISORDERLY CONDUCT

Summary proceedings to determine and restore previous possession, see POSSESSORY WARRANT

1. Nature and scope of remedy.
2. Statutory provisions.
3. Grounds.
4. — In general.
5. — Title and right to possession of plaintiff.
6. — Taking and detention by defendant.
7. Demand.
8. Defenses.
9. Persons entitled to sue.
10. Persons liable.
11. Time to sue, and limitations.
See also LIMITATION OF ACTIONS.
12. Parties.
13. Process.
14. Proceedings for taking and delivery of property.
15. Proceedings for redelivery to defendant.
16. Claims by third persons.
17. Pleading.
18. Evidence.
19. Damages.
20. Trial.
21. — In general.
22. — Questions for jury.
23. — Instructions.
24. — Verdict and findings.
25. Judgment.
26. Execution and enforcement of judgment.
28. Liabilities on bonds and recognizances.
29. — In general.
30. — Redelivery bonds and recognizances.
31. — Claimants' bonds.
32. — Actions on bonds and recognizances.

129. DISORDERLY CONDUCT

SUBJECTS INCLUDED

Infractions, misdemeanors and other malfeasance offensive to the private or public

sense of security in person or property, or the public morals

Conduct threatening or interfering with public or private safety, commerce, or tranquility, which amounts to, gives rise to, or is evocative of an emotional or aggressive response or exchange

Disorderly persons and status offenses

Breach of the peace

Preparation for criminal acts or misconduct short of an attempt

Solicitation of criminal acts or misconduct

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Vehicular equipment regulations, see AUTOMOBILES

Abstractions invoking or applying particular constitutional provisions, see CONSTITUTIONAL LAW

Appeals, see CRIMINAL LAW

Harassment, see THREATS, STALKING, AND HARASSMENT

Stalking, see THREATS, STALKING, AND HARASSMENT

Intoxicating liquors, see INTOXICATING LIQUORS

Sexual solicitation for hire, crime of, see PROSTITUTION

Electronic communications offenses, see TELECOMMUNICATIONS

Loitering, crime of, see VAGRANCY

100. In general.

101. Constitutional and statutory provisions.

102. Nature and elements of offenses in general.

103. — In general.

104. — Breach of the peace.

105. Necessity of disturbance; tendency or imminence.

106. Requisites of annoyance or disturbance in general.

107. Location or proximity; public place.

108. Congregating and obstructing in general.

109. Language, speech, and threats in general.

129. DISORDERLY CONDUCT

110. Noise in general.
111. Parades, demonstrations, and picketing in general.
112. Signs and displays; gestures.
113. Leafleting and pamphlets; mailings.
114. Religious activities in general.
115. Fortune telling and palmistry.
116. Disruption of functions and proceedings.
117. Criminal preparation and status.
118. — In general.
119. — Consorting and associating; gangs.
120. — Disguise or outfit; body armor.
121. — Instruments of crime.
122. — Prowling in general.
123. Privacy, surveillance, and eavesdropping.
124. Following, approaching, or accosting.
125. Solicitation of crime or misconduct.
126. Sexual and indecent activities.
127. Provocation in general; fighting words.
128. Threatening and tumultuous conduct; fighting.
129. Challenges and resistance to authority.
130. — In general.
131. — Verbal resistance in general.
132. — Disobedience in general; failure to disperse.
133. — Provocation in general.
134. — Threatening and tumultuous conduct; fighting.
135. — Motor vehicle stops.
136. Hazardous and offensive conduct and conditions.
137. Weapons and explosives.
138. Modes of transportation and related facilities.
139. Property violations and disputes.
140. Other particular conduct.
141. Defenses.
142. Prosecution in general.
143. Indictment, information, and complaint.
144. Evidence.
145. — In general.
146. — Burden, presumptions, and inferences.
147. — Admissibility.
148. — Weight and sufficiency.
149. Questions of fact or law.
150. Instructions.
151. Sentence and punishment.

130. DISORDERLY HOUSE

SUBJECTS INCLUDED

Owning, letting, keeping or frequenting a building or portion of a building used as a bawdy house, or for any other lewd or indecent purpose, or as a gaming house, or place for use of narcotics, or other place of public resort by which the peace, comfort or decency of the neighborhood is habitually disturbed

Keeping a house, the conduct of the inmates of which constitutes a public nuisance

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Intoxicating liquors, keeping places for illegal sale, etc., see INTOXICATING LIQUORS

Nuisances in general, see NUISANCE

1. Nature and elements of offenses.
2. — In general.
3. — House or other building or place.
4. — Conduct or use of house.
5. — Keeping of house.
6. — Owning or letting or permitting use of house.
7. — Frequenting or living in disorderly house.
8. Defenses.
9. Persons liable.
10. Penalties and actions therefor.
11. Indictment or information.
- 11.1. — In general.
12. — Requisites and sufficiency.
13. — Issues, proof, and variance.
14. Evidence.
- 14.1. — In general.
15. — Presumptions and burden of proof.
16. — Admissibility.
17. — Weight and sufficiency.
18. Trial.
- 18.1. — In general.
19. — Questions for jury.
20. — Instructions.
21. — Verdict.
24. Sentence and punishment.

132. DISTRICT OF COLUMBIA

131. DISTRICT AND PROSECUTING ATTORNEYS

SUBJECTS INCLUDED

Public prosecutors for particular districts or counties in civil as well as criminal cases

Eligibility for the office, appointment, qualification and tenure of office

Rights, powers, duties and liabilities of public prosecutors and their assistants and associate counsel in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Chief law officer in the government of the United States and of each state, and his deputies, assistants and substitutes, see ATTORNEY GENERAL

City attorneys and counsel of municipal corporations, see MUNICIPAL CORPORATIONS

Election of district or county attorneys, see ELECTION LAW

Particular proceedings by prosecuting attorneys, see GRAND JURY, INDICTMENT AND INFORMATION and other specific topics

1. Nature and functions of office.
2. Appointment or election, and qualification and tenure.
 - (1). In general.
 - (2). Appointment to fill vacancy.
 - (3). Eligibility.
 - (4). Qualification.
 - (5). Tenure and removal.
 - (6). Effect of changing district.
3. Deputies, assistants, and substitutes.
 - (5). In general.
 - (1). Appointment.
 - (2). Eligibility.
 - (3). Qualification.
 - (4). Powers.
 - (5). Compensation and fees.
4. Compensation and fees.
5. — In general.
 - (5). In general.
 - (1). Fees and costs.
 - (2). Commissions.
 - (3). Expenses.

- (4). Salary, extra allowances, and deductions.
- (5). Liability of state.
- (6). Allowance and payment or collection.
- (7). Conflicting claims, and deductions from compensation.
6. — United States Attorneys.
 - (1). In general.
 - (2). Mileage and expenses.
 - (3). Allowance and collection.
7. Representation of state or county in general.
 - (1). In general.
 - (2). Contracts and expenditures on behalf of county.
8. Powers and proceedings in general.
 - (1). In general.
 - (2). Statutory and constitutional provisions.
 - (3). Duties.
 - (4). Jurisdiction and authority to act.
 - (5). Discretion in general.
 - (6). Charging discretion.
 - (7). Pre-indictment investigations and subpoenas.
 - (8). Agreements with suspects, convicts, prisoners; effect of such agreements.
 - (9). Ethical standards and conflicts of interest.
 - (10). Authority of victims and private citizens to bring criminal charges.
9. Prosecution or defense of civil actions.
10. Liabilities for official acts, negligence, or misconduct.
11. Criminal responsibility.
12. Liabilities on bonds.

132. DISTRICT OF COLUMBIA

SUBJECTS INCLUDED

The district ceded to the United States as the seat of government

132. DISTRICT OF COLUMBIA

The cessions and their effect in general
Status of the District as a body politic and corporate
Establishment and control of the capitol and other public buildings and public reservations
Power of the national government over the District
Local laws and laws of the United States applicable thereto
Establishment and organization of the local government, appointment of officers thereof, and rights, powers, proceedings and liabilities of such government, its officers and agents
Public improvements and assessments therefor
Property, contracts, indebtedness, bonds and other securities of the District
Taxation by the District and its revenue
Actions by or against the District

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Citizens in the District and their rights in general, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CONSTITUTIONAL LAW, CIVIL RIGHTS
Judges and other officers thereof, see JUDGES, CLERKS OF COURTS and other specific topics
Zoning, see ZONING AND PLANNING

1. Operation and effect of cessions.
2. Status and governmental powers and functions in general.
3. Legislative power of Congress.
4. Application and operation of acts of Congress.
5. Local law.
6. Local government.
7. Officers, agents, and employees.
8. Property of District.
9. Contracts in general.
10. District expenses and charges, and statutory liabilities.
11. Public improvements.
12. — In general.
13. — Preliminary proceedings.
14. — Contracts.
15. — Damages.

16. — Assessments.
17. — Enforcement of assessments.
18. Police power and regulations.
19. — In general.
20. — Violations and enforcement of regulations.
21. Use and regulation of public places, property, and works.
- 21.1. — In general.
22. — Streets and public ways.
- 22.5. — Sewers, drains, and water courses.
23. — Public buildings, parks, and other public places and property.
24. Torts.
- 24.1. — In general.
25. — Exercise of governmental and corporate powers in general.
26. — Acts or omissions of officers or agents.
27. — Defects or obstructions in streets and other public ways.
28. — Defects or obstructions in sewers, drains, and water courses.
29. — Condition or use of public buildings and other property.
30. Power to incur indebtedness or make expenditures.
31. Debts in general, appropriations, and payment.
32. Bonds and other securities.
33. Taxation.
 - (.5). In general.
 - (1). Nature and extent of power in general.
 - (2). Constitutional requirements and restrictions.
 - (3). Liability of persons and property in general.
 - (4). Poll taxes.
 - (5). Employment taxes.
 - (6). Corporations and corporate stock and property in general.
 - (7). Building and loan associations.
 - (8). Banks and loan, trust and investment companies.
 - (9). Telegraph, telephone, and radio companies.
 - (10). Income taxes.
 - (10.1). — In general.
 - (11). — Domicile of taxpayer.

133. DISTURBANCE OF PUBLIC ASSEMBLAGE

- (12). — Source of income.
- (13). — Evasion of tax.
- (14). Exemptions.
- (15). Levy of taxes.
- (15.1). — In general.
- (16). — Rate of taxation.
- (17). Assessment of taxes.
- (17.1). — In general.
- (18). — Statutory provisions.
- (19). — Designation of persons or corporations.
- (20). — List or statement by taxpayer.
- (21). — Valuation.
- (22). — Additional assessments and omitted property.
- (23). — Injunction.
- (24). — Income taxes.
- (25). Review, correction or setting aside.
- (26). Payment and refunding or recovery of taxes paid.
- (27). Collection and enforcement.
- (27.1). — In general.
- (28). — Distress.
- (29). — Sale of land.
- (30). — Injunction against collection or sale of land.
- (31). Redemption from tax sale.
- (32). Tax titles.
- (33). Forfeitures and penalties.
- (34). Disposition of taxes collected.
- (35). Estate and inheritance taxes.
- (35.1). — In general.
- (36). — Statutory provisions.
- (37). — Domicile of decedent.
- (38). — Transfers subject to tax.
- (39). — Assessment.
- (40). — Review.
- 34. Rights and remedies of taxpayers.
- 35. Claims against District.
- 36. Actions.
- 37. Courts of District.

For matters not peculiar to local District of Columbia courts, particularly in cases arising after the District of Columbia Court Reform and Criminal Procedure Act of 1970, see APPEAL AND ERROR, COURTS, and other state procedural topics. For the United States District Court for the District of Columbia, see topics covering other federal district courts, particularly FEDERAL COURTS for establishment, organization, and jurisdiction and FEDERAL CIVIL PROCEDURE for civil procedure.

- 38. — In general; establishment and organization.
Establishment and organization of United States District Court, see FEDERAL COURTS ¶2004.
- 39. — Jurisdiction, powers, and authority.
Exclusive, concurrent, and conflicting jurisdiction, see COURTS ¶550.
- 40. — Procedure.
- 41. — Appellate jurisdiction and procedure.

133. DISTURBANCE OF PUBLIC ASSEMBLAGE

SUBJECTS INCLUDED

- Acts or conduct interfering with the peace or order of a lawful assemblage of persons for religious or other purposes
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts or conduct as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Disorderly conduct generally, and breach of the peace, see DISORDERLY CONDUCT
- Fighting and rioting in public, see RIOT and CRIMINAL LAW ¶45.15

- 1. Nature and elements of offenses.
- 2. Statutory provisions.
- 3. Defenses.
- 4. Persons liable.
- 5. Indictment or information.
- 5.1. — In general.
- 6. — Requisites and sufficiency.
- 7. — Issues, proof, and variance.
- 8. Evidence.
- 8.1. — In general.
- 9. — Presumptions and burden of proof.
- 10. — Admissibility.
- 11. — Weight and sufficiency.
- 12. Trial.
- 13. — In general.

133. DISTURBANCE OF PUBLIC ASSEMBLAGE

- 14. — Questions for jury.
- 15. — Instructions.
- 17. Prevention or suppression of disturbance, and expulsion of offenders.
- 18. Civil liability.
- 19. Sentence and punishment.

134. DIVORCE

SUBJECTS INCLUDED

Dissolution of the relation of a valid marriage, total or partial, by legislative or judicial action

Judicial separation of husband and wife

Nature and scope of the remedy in general

Grounds of actions for divorce or separation and defenses thereto

Jurisdiction to grant divorces or separations, and proceedings therefor

Incidental relief as to alimony and disposition of property

Judgments or decrees and operation and effect thereof

Review of proceedings and costs in actions for divorce or separation

Status, rights and liabilities of divorced persons

Foreign divorces

Separation agreements

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Annulment of marriage, see MARRIAGE AND COHABITATION

Custody and support of children, see CHILD CUSTODY or CHILD SUPPORT

Particular rights and estates in property, effect of divorce, see HOMESTEAD, INSURANCE, and other specific topics

Separate maintenance without divorce, see MARRIAGE AND COHABITATION

- I. NATURE AND FORM OF REMEDY, ¶1-11.5.
- II. GROUNDS, ¶12-38.

- III. DEFENSES, ¶38.5-56.
- IV. PROCEEDINGS, ¶57-499.
 - (A) JURISDICTION, ¶57-65.
 - (B) VENUE, ¶66.
 - (C) TIME FOR PROCEEDING, ¶66.5-69.
 - (D) PARTIES, ¶70-75.
 - (E) PROCESS OR NOTICE, ¶76-80.
 - (F) APPEARANCE, ¶81.
 - (G) ABATEMENT AND REVIVAL, ¶82-83.
 - (H) INCIDENTAL PROCEEDINGS, ¶84-87.5.
 - (I) PLEADING, ¶88-109.
 - (J) EVIDENCE, ¶109.1-137.
 - 1. PRESUMPTIONS AND BURDEN OF PROOF, ¶109.1-110.
 - 2. ADMISSIBILITY, ¶111-123.
 - 3. WEIGHT AND SUFFICIENCY, ¶124-136.
 - 4. TAKING AND FILING PROOFS, ¶137.
 - (K) DISMISSAL, ¶138-139.5.
 - (L) TRIAL OR HEARING, ¶140-150.2.
 - (M) NEW TRIAL, ¶151.
 - (N) JUDGMENT OR DECREE, ¶152-174.
 - (O) APPEAL, ¶175-499.
- V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY, ¶500-1349.
 - (A) IN GENERAL, ¶500-519.
 - (B) PRELIMINARY MATTERS, ¶520-557.
 - 1. IN GENERAL, ¶520-529.
 - 2. SPOUSAL SUPPORT PENDING PROCEEDINGS, ¶530-557.
 - (C) SPOUSAL SUPPORT, ¶558-649.
 - (D) ALLOCATION OF PROPERTY AND LIABILITIES; EQUITABLE DISTRIBUTION, ¶650-899.
 - 1. IN GENERAL, ¶650-670.
 - 2. PROPERTY SUBJECT TO DISTRIBUTION OR DIVISION, ¶671-724.
 - 3. PROPORTION OR SHARE GIVEN ON DIVISION, ¶725-759.
 - 4. VALUATION OF PROPERTY OR INTEREST IN GENERAL, ¶760-779.
 - 5. VALUATION, DIVISION OR DISTRIBUTION OF PARTICULAR PROPERTY OR INTERESTS, ¶780-819.
 - 6. METHODS OF DISTRIBUTION, ¶820-829.
 - 7. DEBTS AND LIABILITIES IN GENERAL, ¶830-849.

134. DIVORCE

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY—Cont'd

(D) ALLOCATION OF PROPERTY AND LIABILITIES; EQUITABLE DISTRIBUTION—Cont'd

8. MARITAL RESIDENCE OR HOMESTEAD, ⚖️850–869.

9. PROCEEDINGS FOR DIVISION OR ASSIGNMENT, ⚖️870–899.

(E) SETTLEMENT AGREEMENTS AND STIPULATIONS, ⚖️900–999.

(F) ENFORCEMENT OF JUDGMENT OR DECREE IN GENERAL, ⚖️1000–1099.

(G) CONTEMPT, ⚖️1100–1129.

(H) COUNSEL FEES, COSTS, AND EXPENSES, ⚖️1130–1199.

(I) APPEAL, ⚖️1200–1349.

VI. OPERATION AND EFFECT OF DIVORCE, AND RIGHTS OF DIVORCED PERSONS, ⚖️1350–1399.

VII. FOREIGN DIVORCES, ⚖️1400–1476.

I. NATURE AND FORM OF REMEDY.

1. Origin and nature of remedy in general.
2. What law governs.
3. Adoption of ecclesiastical law as part of common law.
4. Constitutional and statutory provisions.
5. Legislative divorces.
6. Scope of judicial remedies in general.
- 6.5. Mode and forms of procedure in general.
7. Remedies in personam and in rem.
8. Joinder of causes and proceedings.
9. Cross-action or counterclaim for affirmative relief.
10. Persons entitled to sue.
11. Interest of state or public.
- 11.5. Stipulations and agreements.

II. GROUNDS.

12. Causes for divorce in general.
13. Statutory provisions.
14. Grounds existing at time of marriage.
15. — In general.
16. — Physical incapacity or condition.
17. — Mental incapacity.
18. — Fraud or duress in procuring marriage.
- 18.5. — Illegality of marriage.
19. Personal infirmities and conditions arising after marriage.

II. GROUNDS.(Cont'd)

- 19.1. — In general.
20. — Physical incapacity.
21. — Contagious, loathsome, or incurable disease.
22. — Habitual drunkenness.
23. — Insanity or other mental incompetency.
24. — Conviction and imprisonment for crime.
25. Offenses against conjugal relation in general.
26. Adultery.
27. Cruelty.
 - (.5). In general.
 - (1). Elements of cruelty in general.
 - (2). Continuance or repetition of acts.
 - (3). Necessity of actual physical violence, danger to health, or fear thereof.
 - (4). Necessity of acts overcoming power of self-protection.
 - (5). Degree of refinement of spouses or station in life.
 - (6). Bodily acts or violent and threatening conduct.
 - (7). Harsh or humiliating language or demeanor.
 - (8). False charges of conjugal misconduct.
 - (8.1). — In general.
 - (9). — False charges in pleading.
 - (10). Conduct imposing conditions of hardship or privation.
 - (11). Sexual excesses.
 - (12). Denial of conjugal rights.
 - (13). Communication or being afflicted with disease.
 - (14). Absence or desertion.
 - (15). Habitual drunkenness or use of opiates or narcotics as cruelty.
 - (16). Acts of bestiality.
 - (17). Permitting abuse or indignities by inmates of household.
 - (18). Acts, declarations, and conduct conjunctively constituting cruelty.
28. Conduct rendering cohabitation unsafe.
29. Indignities.
 - (1). In general.

134. DIVORCE

II. GROUNDS.(Cont'd)

- (2). Manifestations of settled hate or estrangement.
- (3). Course of conduct or repetition.
- (4). Conduct making condition intolerable or life burdensome.
- (5). Particular conduct.
- 30. Public defamation.
- 31. Failure to support.
- 32. Neglect of duty.
- 33. Violent and ungovernable temper.
- 34. Inability to live together.
- 35. Renunciation of conjugal relation.
- 36. Voluntary separation.
- 37. Desertion or absence.
 - (5). In general.
 - (1). Definition and elements of statutory grounds.
 - (1.1). — In general.
 - (2). — Cessation of cohabitation.
 - (3). — Intent to permanently separate.
 - (4). — Malice.
 - (5). — Duration and continuity of separation.
 - (6). — Time of inception of cause.
 - (7). — Absence of consent or acquiescence.
 - (8). — Duty to seek renewal of cohabitation.
 - (9). — Legal process to fix character of abandonment.
 - (10). — Withdrawal of support.
 - (11). — Absence from state.
 - (12). Facts constituting desertion.
 - (12.1). — In general.
 - (13). — Absence with or without neglect.
 - (14). — Nonsupport.
 - (15). — Obstinate, willful, or causeless separation.
 - (16). — Separation by necessity or at instance of libellant.
 - (17). — Separation pending institution and determination of suit for divorce or separate maintenance.
 - (18). — Imprisonment or involuntary absence.

II. GROUNDS.(Cont'd)

- (19). — Wrongfully or causelessly prolonging separation not originally cause for divorce.
- (20). — Refusal of conjugal rights or abstinence from cohabitation.
- (21). — Refusal to follow husband's change of domicile.
- (22). — Misconduct justifying or excusing separation of other party.
- (23). — Separation because of husband's inability to support wife.
- 38. Causes deemed by court sufficient.

III. DEFENSES.

- 38.5. In general.
- 39. Nonexistence or invalidity of marriage.
- 40. Agreements for separation.
- 41. Mistake of law.
- 42. Mistake of fact.
- 43. Insanity.
- 44. Drunkenness.
- 45. Connivance.
- 46. Provocation.
- 47. Condonation.
- 48. — In general.
- 49. — Acts constituting condonation.
 - (1). In general.
 - (2). Continuance of cohabitation.
 - (3). Cohabitation pending divorce suit.
 - (4). Cohabitation after knowledge of offense.
 - (5). Occasional visits or sexual intercourse without renewal of cohabitation.
 - (6). Overtures for reconciliation and renewed cohabitation.
 - (7). Promise of remission and forgiveness.
- 50. — Operation and effect.
- 51. — Revival of offenses condoned.
- 52. Recrimination.
- 53. — In general.
- 54. — Grounds.
- 55. — Operation and effect.
- 56. Collusion.

134. DIVORCE

IV. PROCEEDINGS.

(A) JURISDICTION.

- 57. Courts invested with jurisdiction.
- 58. Jurisdiction of cause of action.
- 59. — In general.
- 60. — Place of marriage.
- 61. — Place of occurrence of cause for divorce.
- 62. — Domicile or residence of parties.
 - (1). In general.
 - (2). Domicile of plaintiff.
 - (3). Domicile or residence of opposing or adverse party.
 - (4). Domicile at time of suit or time of delictum.
 - (5). Jurisdiction of person of nonresident or actual notice of suit.
 - (6). Facts constituting jurisdictional domicile or residence.
- 63. — Separate domicile.
- 64. — Acquisition of domicile for purpose of divorce.
- 65. Jurisdiction of the person.

(B) VENUE.

- 66. In general.

(C) TIME FOR PROCEEDING.

- 66.5. Time to sue.
- 67. Application of general statutes of limitation.
See also LIMITATION OF ACTIONS.
- 68. Special limitations.
See also LIMITATION OF ACTIONS.
- 69. Laches.

(D) PARTIES.

- 70. In general.
- 71. Plaintiff.
- 72. Defendants.
- 73. Intervention.
- 74. Defense on behalf of state or public.

(E) PROCESS OR NOTICE.

- 76. In general.
- 77. Personal service.
- 78. Substituted service.
- 79. Service by publication.
- 80. Return and proof of service.

(F) APPEARANCE.

- 81. In general.

(G) ABATEMENT AND REVIVAL.

- 82. Pendency of other action.
- 83. Abatement on death of party.

(H) INCIDENTAL PROCEEDINGS.

- 84. Arrest or sequestration.
- 85. Discovery.
- 86. Physical or mental examination.
- 87. Injunction against interference with person or property.
- 87.5. Conciliation proceedings.

(I) PLEADING.

- 88. Mode and form in general.
- 89. Bill, libel, complaint, or petition.
- 89.1. — In general.
- 90. — Form and requisites in general.
- 91. — Residence of parties.
- 92. — Marriage.
- 93. — Grounds for divorce.
 - (1). In general.
 - (2). Adultery.
 - (3). Cruelty and ill treatment, and indignities.
 - (4). Desertion, absence, abandonment, or neglect, and nonsupport.

- 95. — Prayer for relief.

- 96. Answer.

- 96.1. — In general.

- 97. — Form and requisites in general.

- 98. — Denials and admissions.

- 99. — Affirmative defenses.

- 101. Counterclaim or cross-bill, libel, complaint, or petition.

- 102. Replication or reply.

- 103. Demurrer.

- 104. Amended and supplemental pleadings.

- 105. Verification of pleadings.

- 106. Affidavits accompanying pleadings.

- 107. Bill of particulars.

- 108. Issues, proof, and variance.

(J) EVIDENCE.

1. PRESUMPTIONS AND BURDEN OF PROOF.

- 109.1. In general.

- 109.2. Residence of parties.

134. DIVORCE

IV. PROCEEDINGS.(Cont'd)

109.3. Grounds for divorce.

- (1). In general.
- (2). Desertion.

109.5. Defenses.

2. ADMISSIBILITY.

111. In general.
112. Residence of parties.
113. Marriage.
114. Physical or mental condition.
115. Adultery.
116. Cruelty or other ill treatment.
117. Failure to support or other neglect.
118. Temper, acts, or conduct incompatible with conjugal relation.
119. Desertion.
120. Connivance.
121. Condonation.
122. Collusion.

3. WEIGHT AND SUFFICIENCY.

124. In general.
 - 124.1. Degree of proof.
 - 124.2. Particular facts or issues.
 - 124.3. Domicile or residence.
 - 124.4. Grounds for divorce; defenses in general.
 - 124.5. Voluntary separation.
 - 124.6. Limited divorce or separation.
125. Admissions and confessions.
126. Grounds existing at time of marriage.
127. Testimony of parties, and corroboration.
 - (1). In general.
 - (2). Failure of opposite party to deny facts testified to.
 - (3). Necessity of corroboration.
 - (4). Sufficiency of corroboration.
128. Physical or mental condition.
129. Adultery.
 - (5). In general.
 - (1). Degree of proof.
 - (2). Certainty and definiteness of evidence as to time and place.
 - (3). Identification of defendant.
 - (4). Number of witnesses.
 - (5). Credibility of witnesses testifying to acts of adultery.

IV. PROCEEDINGS.(Cont'd)

- (6). Testimony of paramour and corroboration thereof.
- (7). Testimony of prostitutes, detectives, or persons of low character.
- (8). Testimony of young children.
- (9). Circumstantial evidence.
- (10). Interpretation in favor of innocence.
- (11). Circumstances coupled with admissions or confessions.
- (12). Suspicious or compromising circumstances or situations.
- (13). Resorting to houses of ill fame and conduct there.
- (14). Occupancy of same room or bed with paramour.
- (15). Acts or expressions of affection for paramour.
- (16). Suspicious and incriminating circumstances conjunctively proving offense.
- (17). Recriminating charges.
130. Cruelty or other ill treatment.
131. Failure to support or other neglect.
132. Temper, acts, or conduct incompatible with conjugal relation.
 - (1). In general.
 - (2). Indignities.
 - (2.1). — In general.
 - (3). — Evidence sufficient to warrant divorce.
 - (4). — Evidence insufficient to warrant divorce.
 - (5). Degree of proof.
 - (6). Particular evidence or conduct.
 - (7). Innocence, equal fault, or provocation.
133. Desertion or absence.
 - (1). In general.
 - (2). Fact of desertion.
 - (3). — In general.
 - (4). — Evidence sufficient to warrant divorce.
 - (5). — Constructive desertion.
 - (6). — Particular evidence or conduct.
 - (7). — Period of desertion.

134. DIVORCE

IV. PROCEEDINGS.(Cont'd)

- (8). — Absence of consent or encouragement; offer of reconciliation.
- (9). Number of witnesses.
- (10). Intention or fault as between parties.

- 134. Connivance.
- 135. Condonation.
- 136. Collusion.

4. TAKING AND FILING PROOFS.

- 137. Taking and filing proofs before hearing.

(K) DISMISSAL.

- 138. Dismissal.
- 138.1. — In general.
- 139. — Voluntary.
- 139.5. — Involuntary.

(L) TRIAL OR HEARING.

- 140. Scope of inquiry and powers of court.
- 141. — In general.
- 142. — On default of defendant.
- 143. Reference.
 - (.5). In general.
 - (1). Nature, grounds, and order of reference.
 - (2). Referees and proceedings in general.
 - (3). Notice of hearing.
- 144. Submission of issues to jury.
- 145. Proceedings preliminary to trial or hearing.
- 146. Mode and conduct of trial in general.
- 147. Questions for court and jury.
- 148. Instructions.
- 149. Verdict and findings by jury.
- 150. Decision and findings by court.
- 150.1. Decision and findings by referee or master.
 - (1). In general.
 - (2). Operation and effect.
 - (3). Objections and exceptions, and hearing thereon.
 - (4). Recommittal.

(M) NEW TRIAL.

- 151. In general.

(N) JUDGMENT OR DECREE.

- 152. Nature and essentials in general.
- 153. Scope and extent of relief.
- 154. — In general.
- 155. — Limited divorce or separation.
- 156. — Decree nisi.
- 157. — Absolute divorce.
- 158. — Prohibition or leave to marry.
- 159. By default or pro confesso.
 - 159.1. — In general.
- 160. — Requisites and validity.
- 161. — Opening or setting aside.
- 162. On trial of issues.
- 163. Amendment or correction.
- 164. Modification.
- 165. Opening or vacating.
 - (.5). In general.
 - (1). Power and authority.
 - (2). Persons entitled and right to relief.
 - (3). Grounds; defenses in general.
 - (4). Laches and limitations.
 - (5). Notice.
 - (5.5). Pleading and evidence.
 - (6). Effect of order or decree.
 - (7). Amendment of decree on consent of parties.
- 166. Bill of review.
- 167. Actions to vacate or set aside.
- 168. Collateral attack.
- 169. Construction and operation in general.
- 170. Time of taking effect.
- 171. Merger and bar of causes of action and defenses.
- 172. Conclusiveness of adjudication.
- 174. Evidence of fact of divorce.

(O) APPEAL.

- 175. Nature and form of remedy.
- 176. Appellate jurisdiction.
- 177. Decisions reviewable.
- 178. Right of review.
- 179. Presentation and reservation in lower court of grounds of review.
- 180. Parties.
- 181. Taking and perfecting appeal.
- 182. Effect of appeal.
- 183. Record.
- 183.5. Hearing.

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IV. PROCEEDINGS.(Cont'd)

184. Review.

(5). In general.

- (1). Scope and extent in general.
- (2). Parties entitled to allege error.
- (3). Amendments, additional proofs, and trial of cause anew.
- (4). Presumptions.
- (5). Discretion of court.
- (6). Questions of fact, verdicts, and findings.
 - (6.1). — In general.
- (7). — Credibility of witnesses.
- (8). — Dismissal, nonsuit, or direction of verdict.
- (9). — Verdicts.
- (10). — Findings of court or chancellor.
- (11). — Findings of referee.
- (12). Harmless error.

185. Determination and disposition of cause.

186. — In general.

187. — Effect of marriage of party.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.

(A) IN GENERAL.

500. In general.

501. Nature and form of remedies in general.

502. What law governs.

503. — In general.

504. — Spousal support.

505. — Property distribution.

506. Constitutional and statutory provisions.

507. — In general.

508. — Purpose.

509. — Validity.

(1). In general.

(2). Spousal support.

(3). Property distribution.

(4). Counsel fees, costs, and expenses.

510. — Retroactive operation.

(1). In general.

(2). Spousal support.

(3). Property distribution.

(4). Counsel fees, costs, and expenses.

511. Power or jurisdiction to make allowance or award in general.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

512. Factors and grounds impacting awards and decisions in general.

513. Discretion in determining financial obligations.

514. Sufficiency of process, service, or appearance in general.

(B) PRELIMINARY MATTERS.

1. IN GENERAL.

520. In general.

521. Attachment against property of defendant before award.

522. Injunction against disposition of property before award.

523. Receiver before award.

2. SPOUSAL SUPPORT PENDING PROCEEDINGS.

530. In general.

531. Condition of cause.

532. Allowance pending appeal.

533. Authority and discretion of court.

534. Grounds, factors, and considerations.

535. Defenses and objections.

536. Application and proceedings thereon.

537. — In general.

538. — Form, requisites, and sufficiency of application.

539. — Notice.

540. — Affidavits, showing, or evidence.

(1). In general.

(2). Presumptions and burden of proof.

(3). Weight and sufficiency.

541. — Hearing and determination in general.

542. — Time for hearing or determination.

543. Amount.

544. Order.

545. — In general.

546. — Amendment.

547. — Modification of order.

548. — Vacating or setting aside order.

549. — Operation and effect in general.

550. — Commencement.

551. — Termination.

552. Payment.

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(C) SPOUSAL SUPPORT.

- 558. In general.
- 559. Nature and purpose of spousal support; property award distinguished.
- 560. Statutory basis for award; necessity of statute.
- 561. On limited divorce or separation.
- 562. On absolute divorce.
- 563. When divorce is not granted.
- 564. After judgment or decree of divorce.
- 565. Authority and discretion of trial court.
 - (1). In general.
 - (2). Discretion as to amount.
 - (3). Abuse of discretion in general.
- 566. Mandatory nature.
- 567. Grounds and defenses in determining existence and amount of obligation.
- 568. — In general.
- 569. — Conduct of parties; cause of divorce.
- 570. — Contributions.
- 571. — Sexual behavior, orientation, or preference.
- 572. — Relative needs and abilities to pay in general.
- 573. — Standard of living and station in life.
- 574. — Separate wealth, estate and resources.
- 575. — Effect of property distribution.
- 576. — Earnings; earning capacity.
- 577. — Pension, retirement, or government benefits or compensation.
- 578. — Expenses and debts in general.
- 579. — Tax considerations in general.
- 580. — Child custody and support.
- 581. — Residence.
- 582. — Length of marriage.
- 583. — Age of parties.
- 584. — Health issues.
- 585. — Double-counting, “double-dipping,” dual use.
- 586. — Multiple factors.
- 587. Actions and proceedings in general.
 - Discovery issues in divorce generally, see ¶85.*
- 588. — In general.
- 589. — Time for proceedings.
- 590. — Jurisdiction and venue.
- 591. — Parties.
- 592. — Notice and process.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 593. — Pleading.
- 594. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
 - (4). — In general.
 - (5). — Needs.
 - (6). — Ability to pay in general.
 - (7). — Income and assets.
- 595. — Trial or hearing in general.
 - New trial issues, see ¶151.*
- 596. — Questions of law or fact.
- 597. — Determination and findings.
 - (1). In general.
 - (2). Needs.
 - (3). Ability to pay in general.
 - (4). Income and assets.
- 598. Award in general; calculation.
 - (1). In general.
 - (2). Inadequacy or excessiveness of amount.
- 599. Credits and offsets.
- 600. Automatic or built-in adjustments; escalator clauses.
- 601. Award of gross sum.
 - (1). In general.
 - (2). Grounds, factors, and defenses in general.
 - (3). Particular cases.
- 602. Award of specific property as alimony.
- 603. Insurance.
 - Insurance for benefit of children, see CHILD SUPPORT.*
- 604. Reservation of jurisdiction.
- 605. Extent of time of payments.
- 606. — In general.
- 607. — Commencement of obligation to pay.
- 608. — Rehabilitative awards; awards until self-supporting.
- 609. — Conditions terminating or suspending obligation.
 - (1). In general.
 - (2). Sexual relations, cohabitation, or remarriage.
 - (3). Death.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 610. — Proceedings for termination of alimony or support.
- 611. Definiteness of award.
- 612. Judgment or decree.
- 613. — In general.
Validity of provision as to modifiability, see ¶624.
- 614. — Operation and effect.
- 615. Security for payment.
- 616. Other particular conditions.
- 617. Amendment of decree.
- 618. Modification of judgment or decree.
- 619. — In general.
- 620. — Nature and purpose.
- 621. — Modification proceeding not intended as collateral attack.
- 622. — Power and authority of court.
- 623. — Necessity that power to modify be reserved in initial decree.
- 624. — Effect of provision in initial decree as to modifiability thereof.
- 625. — Effect of initial decree silent as to spousal support.
- 626. — Discretion of trial court.
- 627. — Grounds, factors, and defenses.
 - (1). In general.
 - (2). Factors considered in general.
 - (3). Change in circumstances in general; materiality.
 - (4). Expenses in general.
 - (5). Health issues.
 - (6). Employment and wage or salary issues.
 - (7). Obligor rehabilitation or capacity of self-support.
 - (8). Military service.
 - (9). Pension, retirement, or government benefits or compensation.
 - (10). Separate wealth, estate and resources in general.
 - (11). Inheritance, gifts, lottery winnings, or other increase in wealth.
 - (12). Decrease in wealth; bankruptcy.
 - (13). Remarriage, cohabitation, sexual activity, or birth of new children.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- (14). Compliance or noncompliance with payment order by obligor; arrears.
- (15). Multiple grounds or defenses.
- 628. — Modification of decree incorporating or based on separation agreement.
 - (1). In general.
 - (2). Power to modify decree.
- 629. — Lump sum payment; alimony in gross.
- 630. — Procedure in general.
- 631. — Petition, application, notice, and pleading.
- 632. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 633. — Determination and findings.
- 634. — Amount.
- 635. — Judgment.
 - (1). In general.
 - (2). Scope of relief granted in general.
 - (3). Retroactivity.
 - (4). Operation and effect.
- 636. Vacating or setting aside judgment or decree.
 - (1). In general.
 - (2). Grounds.
 - (3). Procedure.
- 637. Payment.
- 638. Assignability of spousal support or bond therefor.

(D) ALLOCATION OF PROPERTY AND LIABILITIES; EQUITABLE DISTRIBUTION.

1. IN GENERAL.

- 650. In general.
- 651. Nature and purpose.
- 652. Power and authority of court.
- 653. Discretion of court in general.

2. PROPERTY SUBJECT TO DISTRIBUTION OR DIVISION.

- 671. In general.
- 672. Time of acquisition of property in general.
- 673. — In general.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 674. — Property acquired before marriage.
- 675. — Property acquired after divorce or dissolution.
- 676. — Interests expected in the future.
- 677. Jointly owned property.
- 678. Community property in general.
Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.
- 679. Separate or marital property in general.
- 680. — In general.
- 681. — What is marital property in general.
- 682. — Time of acquisition.
- 683. — Commingling, tracing, and transmutation.
- 684. — Contributions and increases to separate property in general.
- 685. — Enhancements and proceeds of marital property in general.
- 687. — Distribution of separate property in general.
- 688. Particular interests as separate or marital property.
- 689. — In general.
- 690. — Enhancements and proceeds of property in general.
- 691. — Real estate and proceeds thereof in general.
- 692. — Farms and ranches.
- 693. — Marital residence or homestead.
- 694. — Personal and household goods.
- 695. — Vehicles, vessels, and other forms of transport.
- 696. — Licenses, education and degrees; compensating payments.
- 697. — Income and refunds.
- 698. — Gaming and lottery proceeds.
- 699. — Accounts and deposits.
- 700. — Trusts and annuities.
- 701. — Tax interests and benefits.
- 702. — Possessory interests and conversion rights; motor vehicle leases.
- 703. — Businesses and associated assets in general.
- 704. — Receivables.
- 705. — Stocks, bonds, and other investments.
- 706. — Good will.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 707. — Machinery and equipment in general; tools.
- 708. — Farm implements and equipment.
- 709. — Crops and livestock.
- 710. — Insurance policies and proceeds in general.
- 711. — Employment benefits in general.
- 712. — Retirement or pension rights.
- 713. — Military retirement, pension or disability rights.
- 714. — Disability benefits and workers' compensation.
- 715. — Rights as creditor; notes.
- 716. — Choses and expectancies in general.
- 717. — Money judgments and recoveries.
- 718. — Gifts and inheritance.

3. PROPORTION OR SHARE GIVEN ON DIVISION.

- 725. In general.
- 726. Factors and considerations in general.
- 727. Equity and proportionality in general.
- 728. Equality.
- 729. Percentage or share in general.
- 730. Time of assessment or measure.
- 731. Particular factors and considerations.
- 732. — Nature and extent of assets allocated in general.
- 733. — Balance and effect of allocation or other award.
- 734. — Age, health, and need in general.
- 735. — Special needs and expenses; care of child or dependent.
- 736. — Alimony and other support obligations.
- 737. — Education, skills, and experience; employability.
- 738. — Income and earning capacity; employment.
- 739. — Separate wealth, estate and resources.
- 740. — Length of marriage, living standard and lifestyle.
- 741. — Contributions during marriage in general; marital role.
- 742. — Contributions and enhancements to property.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 743. — Other marital conduct; misconduct in general.
- 744. — Dissipation, secreting and waste; recapture.
 - (1). In general.
 - (2). Nature of act or expenditure in general.
 - (3). Necessaries and family expenses in general.
 - (4). Temporary alimony and support.
 - (5). Debt servicing and payment in general.
 - (6). Property expense and upkeep.
 - (7). Business expenditures.
 - (8). Litigation expenses.
 - (9). Purchases and conveyances.
 - (10). Recapture in general.
- 745. — Fault in separation or divorce.
- 746. — Commission of crime.
- 747. — Tax consequences of distribution.
- 748. — Other particular factors.
- 749. — Particular applications of multiple factors.
- 750. Estoppel and waiver in general.

4. VALUATION OF PROPERTY OR INTEREST IN GENERAL.

- 760. In general.
- 761. Time of valuation in general.
- 762. Evidence in general.
- 763. — In general.
- 764. — Presumptions and burden of proof.
- 765. — Weight and sufficiency.
- 766. Methodologies of valuation and allocation in general.
- 767. — In general.
- 768. — Particular methodologies in general.
- 769. — Percentage method.
- 770. — Deferred distribution method.
- 771. — Present value method.
- 772. — Source of funds rule.
- 773. — Coverture fraction.
- 774. Credits, offsets and deductions in general.

5. VALUATION, DIVISION OR DISTRIBUTION OF PARTICULAR PROPERTY OR INTERESTS.

- 780. In general.
- 781. Nature of property or interest in general.
- 782. Enhancements and proceeds of separate property.
- 783. Real estate and proceeds thereof in general.
- 784. Farms and ranches.
- 785. Personal and household goods.
- 786. Vehicles, vessels, and other forms of transport.
- 787. Licenses, education and degrees; compensating payments.
- 788. Income and refunds.
- 789. Gaming and lottery proceeds.
- 790. Accounts and deposits.
- 791. Trusts and annuities.
- 792. Tax interests and benefits.
- 793. Possessory interests and conversion rights; motor vehicle leases.
- 794. Businesses and associated assets in general.
- 795. Receivables.
- 796. Stocks, bonds, and other investments.
- 797. Good will.
- 798. Machinery and equipment in general; tools.
- 799. Farm implements and equipment.
- 800. Crops and livestock.
- 801. Insurance policies and proceeds in general.
- 802. Employment benefits in general.
- 803. Retirement or pension rights.
- 804. Military retirement, pension or disability rights.
- 805. Disability benefits and workers' compensation.
- 806. Rights as creditor; notes.
- 807. Choses and expectancies in general.
- 808. Money judgments and recoveries.
- 809. Gifts and inheritance.
- 810. Community property in general.
Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.

6. METHODS OF DISTRIBUTION.

- 820. In general.
- 821. Distribution in kind.
- 822. Sale and distribution of proceeds.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 823. Award of gross sum; money judgments.
- 824. Notes and payment over time; interest.
- 825. Conversion to tenancy in common.
- 826. Credits, offsets and compensating payments.
- 827. Distribution of pension and retirement benefits.

7. DEBTS AND LIABILITIES IN GENERAL.

- 830. In general.
- 831. Separate or marital character.
- 832. Factors and considerations in general.
- 833. Allocations of overall debt.
- 834. Particular debts and liabilities.
- 835. — Financial institutions and credit cards.
- 836. — Educational expenses and loans.
- 837. — Medical, dental, and other health-related expenses.
- 838. — Insurance.
- 839. — Taxes and assessments.
- 840. — Automobile loans and leases.
- 841. — Intra-family loans in general.
- 842. — Interspousal loans and transactions.
- 843. — Other particular and multiple debts.
- 844. Reduction of indebtedness; contributions.
- 845. Valuation.

8. MARITAL RESIDENCE OR HOMESTEAD.

- 850. In general.
- 851. Valuation and allocation in general.
- 852. Rights of occupancy.
- 853. — In general.
- 854. — Pending proceedings.
- 855. — Rental obligations between parties.
- 856. Effect of child custody.
- 857. Effect of contributions; reimbursement.
- 858. Awards subject to indebtedness in general.
- 859. Allocations of debts and liabilities.
- 860. — In general.
- 861. — Existing obligations.
- 862. — Future obligations.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 863. Methods of distribution; compensating payments.
- 864. Sale and division of proceeds.

9. PROCEEDINGS FOR DIVISION OR ASSIGNMENT.

- 870. In general.
- 871. Jurisdiction of person and property.
- 872. Process, service, notice.
- 873. Appearance.
- 874. Parties.
- 875. Pleadings.
- 876. Evidence.
 - 876.1. — In general.
 - 876.2. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Nature or character of property or ownership in general.
 - (3). Contributions, appreciation, and enhancements.
 - (4). Gifts, inheritance, and change of form.
 - (5). Allocation, methods and factors therein.
 - (6). Dissipation, waste, and other misconduct.
 - (7). Community property, interests and liabilities.
Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.
 - (8). Debts, expenses, and liabilities.
 - 876.3. — Admissibility.
 - 876.4. — Degree of proof.
 - 876.5. — Weight and sufficiency.

- (1). In general.
- (2). Nature or character of property or ownership in general.
- (3). Contributions, appreciation, and enhancements.
- (4). Gifts, inheritance, and change of form.
- (5). Allocation, methods and factors therein.
- (6). Dissipation, waste, and other misconduct.
- (7). Community property, interests and liabilities.
Community or separate character and community property reimbursement issues, see MARRIAGE AND COHABITATION.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- (8). Debts, expenses, and liabilities.
- (9). Marital residence or homestead.
- 877. Hearing.
- 878. Verdict, findings, or determination.
- 879. — In general.
- 880. — Time and order of determinations.
- 881. — Sufficiency and clarity.
- 882. Judgment or decree.
- 883. — In general.
- 884. — Stays and incidental relief.
- 885. — Form and requisites.
- 886. — Relief granted in general.
- 887. — Conditions.
- 888. — Construction and interpretation.
- 889. — Operation and effect.
- 890. — Res judicata and conclusiveness.
- 891. — Amendment or correction.
- 892. — Opening and vacating.
 - (1). In general.
 - (2). Grounds in general.
 - (3). Mistake or neglect.
 - (4). Fraud or concealment.
 - (5). Proceedings in general.
 - (6). Time for proceedings.
- 893. — Modification.
 - (1). In general.
 - (2). Prohibitions and exceptions in general.
 - (3). Grounds in general.
 - (4). Particular cases.
 - (5). — In general.
 - (6). — Pensions and retirement benefits.
 - (7). — Debts and liabilities.
 - (8). — Residence or homestead.
 - (9). — Methods of distribution.
 - (10). Proceedings.
- 894. Security for payment.
- 895. Payment.

(E) SETTLEMENT AGREEMENTS AND STIPULATIONS.

Antenuptial and post-nuptial agreements, see MARRIAGE AND COHABITATION. Stipulations and agreements as to child custody, see CHILD CUSTODY. Stipulations and agreements as to child support, see CHILD SUPPORT.

- 900. In general.
- 901. Public policy in general.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 902. Nature and purpose.
- 903. Requisites and validity.
- 904. — In general.
- 905. — Unconscionability.
- 906. — Offer and acceptance.
- 907. — Form and requisites; signature.
- 908. — Execution, acknowledgement, and delivery.
- 909. — Consideration; adequacy of provision for spouse.
- 910. — Validity of assent.
 - (1). In general.
 - (2). Capacity.
 - (3). Counsel or trustee.
 - (4). Fraud.
 - (5). Duress.
 - (6). Undue influence.
 - (7). Accident or mistake.
 - (8). Estoppel or ratification.
 - (9). Evidence.
 - (10). Questions of law or fact; questions for jury.
- 911. — Public policy against inducement of divorce in general.
- 912. — Escalator clauses; automatic, built-in adjustments.
- 913. — Waiver of alimony or property division.
- 914. — Provisions regarding modification or termination of support.
- 915. Approval by court.
- 916. Construction and operation.
- 917. — In general.
- 918. — Contract principles; intent of parties.
- 919. — Effect in dissolution proceeding in general.
 - (1). In general.
 - (2). Spousal support.
 - (3). Property division and distribution.
- 920. — Rights in property in general.
- 921. — Property included or affected in general.
- 922. — Integration.
- 923. — Real estate and interests therein.
- 924. — Personal property.
- 925. — Pensions and retirement benefits.
- 926. — Debts and liabilities.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 927. — Estate created or interest conferred.
- 928. — Non-property provisions in general.
- 929. — Trust for benefit of spouse.
- 930. — Bond and indemnification provisions.
- 931. — Insurance.
- 932. Modification prior to or at time of divorce or legal separation.
- 933. Merger in subsequent contract.
- 934. Merger or incorporation in judgment of divorce or legal separation.
- 935. — In general.
- 936. — Requisites of merger or incorporation in general.
- 937. — Agreements merged or incorporated in judgment.
- 938. — Agreements not merged or incorporated in judgment.
- 939. — Agreements partly merged or incorporated in judgment.
- 940. — Effect of merger or incorporation.
- 941. Modification of agreement by court subsequent to divorce or legal separation.
- 942. — In general.
- 943. — Grounds.
 - (1). In general.
 - (2). Fraud.
 - (3). Mistake or accident.
 - (4). Change in circumstances.
 - (5). Consent of parties.
- 944. — Change in the law.
- 945. — Effect of presence or absence of provision as to modification.
- 946. Revocation, rescission and repudiation by acts or agreements of parties.
- 947. — In general.
- 948. — Unilateral withdrawal.
- 949. — Intent.
- 950. — Cohabitation in general.
- 951. — Resumption or offer of marital relations.
- 952. — Filing divorce petition or granting of decree.
- 953. — Death of party.
- 954. Performance or breach.
- 955. — In general.

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- 956. — Rights in property in general.
- 957. — Other particular provisions in general.
- 958. — Defenses and excuses for noncompliance.
- 959. Effect of death and rights of survivors in general.
- 960. Rights of children and heirs.
- 961. Rights of creditors or third parties.
- 962. Actions and proceedings in general.
- 963. — In general.
- 964. — Time for proceedings.
- 965. — Jurisdiction and venue.
- 966. — Parties.
- 967. — Notice and process.
- 968. — Pleading.
- 969. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility in general.
 - (4). Degree of proof.
 - (5). Weight and sufficiency.
- 970. — Trial or hearing in general.
- 971. — Determination and findings.
- 972. — Judgment or order in general.
- 973. — New trial or rehearing.
- 974. — Relief granted in general.
- 975. — Damages or other monetary award.

(F) ENFORCEMENT OF JUDGMENT OR DECREE IN GENERAL.

- 1000. In general.
- 1001. Authority and discretion of court.
- 1002. Nature and purpose in general.
- 1003. Action or motion on judgment or decree in general.
- 1004. Conditions precedent.
- 1005. Defenses in general.
- 1006. Time for enforcement.
- 1007. Estoppel and waiver.
- 1008. Agreements and stipulations as to enforcement.
- 1009. Nature of violation in general.
- 1010. — In general.
- 1011. — Nonpayment.
- 1012. — Property transfers.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1013. Conveyance in fraud of spouse's rights.
- 1014. — In general.
- 1015. — Transfers and transactions invalid.
- 1016. — Knowledge and intent of grantee or purchaser.
- 1017. Alimony and support arrearages; credits and overpayments.
- 1018. — In general.
- 1019. — Vesting of right to unpaid support.
- 1020. — Amount owed in general.
- 1021. — Credits and offsets in general.
- 1022. — Defenses and grounds for reduction in general.
- 1023. — Conduct and circumstances of obligee.
- 1024. — Conduct and circumstances of obligor.
- 1025. — Other particular defenses or grounds.
- 1026. — Retroactive modification.
- 1027. Arrearages on property payments and installments.
- 1028. Administrative enforcement.
- 1029. Dismissal, striking out, or stay of proceedings.
- 1030. Execution.
- 1031. — In general.
- 1032. — Supplementary proceedings.
- 1033. Attachment of property or person.
- 1034. Garnishment and wage execution.
- 1035. Scire facias.
- 1036. Sequestration and escrow.
- 1037. Liens.
- 1038. Bonds.
- 1039. Trusts and trustees.
- 1040. Receivers and receiverships.
- 1041. Other particular mechanism or remedy.
- 1042. — In general.
- 1043. — Sanctions, penalties and fines.
- 1044. — Qualified domestic relations orders.
- 1045. — Damages.
- 1046. — Sale or distribution in kind; proceeds.
- 1047. — Imprisonment or community service.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1048. Rights as to third parties in general.
- 1049. Injunction.
- 1050. Proceedings in general.
Discovery, see §85.
- 1051. Persons entitled to prosecute.
- 1052. Jurisdiction.
- 1053. Venue.
- 1054. Time for proceedings; laches.
- 1055. Parties.
- 1056. Process and notice.
- 1057. Appearance.
- 1058. Pleading.
- 1059. Evidence.
 - (1). In general.
 - (2). Admissibility.
 - (3). Presumptions and burden of proof.
 - (4). Weight and sufficiency.
- 1060. Hearing.
 - (1). In general.
 - (2). Entitlement.
 - (3). Questions of law and fact.
- 1061. Findings and verdict.
- 1062. Judgment and order.
 - (1). In general.
 - (2). Construction and operation.
 - (3). Conclusiveness.
- 1063. Interest.
- 1064. Other particular actions and proceedings.
- 1065. — In general.
- 1066. — Actions on bonds.
- 1067. — Actions against third persons.
- 1068. — Actions to subject trust funds.
- 1069. Actions to set aside fraudulent conveyances.
- 1070. — In general.
- 1071. — Right of action.
- 1072. — Proceedings in general.
- 1073. — Parties.
- 1074. — Pleading.
- 1075. — Evidence.
- 1076. — Hearing.
- 1077. — Judgment or decree.
- (G) CONTEMPT.
- 1100. In general.

134. DIVORCE

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1101. Nature and form of remedy.
- 1102. Existence of other remedy.
- 1103. Nature of violation.
- 1104. Necessity and mandate of underlying order.
- 1105. Enforcement of agreements and stipulations.
- 1106. Defenses and excuses.
- 1107. Sanctions in general.
- 1108. Imprisonment.
- 1109. Purging and discharge.
- 1110. Proceedings in general.
- 1111. Persons entitled to prosecute.
- 1112. Jurisdiction and venue.
- 1113. Time for proceedings; laches.
- 1114. Parties.
- 1115. Process and notice.
- 1116. Appearance.
- 1117. Pleading.
 - (1). In general.
 - (2). Issues, proof and variance.
- 1118. Evidence.
 - (1). In general.
 - (2). Admissibility.
 - (3). Presumptions and burden of proof.
 - (4). Degree of proof.
 - (5). Weight and sufficiency.
- 1119. Hearing.
 - (1). In general.
 - (2). Entitlement.
 - (3). Counsel.
 - (4). Questions of law and fact.
 - (5). Findings and verdict.
- 1120. Judgment and order.
- 1121. — In general.
- 1122. — Construction and operation.
- 1123. — Conclusiveness.

(H) COUNSEL FEES, COSTS, AND EXPENSES.

Costs and fee issues as to child custody, see CHILD CUSTODY. Costs and fee issues as to child support, see CHILD SUPPORT.

- 1130. In general.
- 1131. Authority and discretion of court.
- 1132. Estoppel, waiver and objections.
- 1133. Stipulations and agreements.
- 1134. Persons entitled or liable in general.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1135. Liability of wife in general.
- 1136. Liability of husband in general.
- 1137. Grounds and considerations for award or amount in general.
- 1138. — In general.
- 1139. — Grounds and extent of suit; complexity and merit.
- 1140. — Initiating and prevailing party; partial success.
- 1141. — Conduct of litigation; misconduct in general.
- 1142. Need and ability to pay.
- 1143. — In general.
- 1144. — Financial condition and resources in general.
- 1145. — Resources of wife in general.
- 1146. — Resources of husband in general.
- 1147. — Effect of divorce recoveries.
- 1148. — Effect of child custody or support.
- 1149. Defense or bar to recovery in general; marital fault.
- 1150. Effect of reconciliation in general.
- 1151. Dismissal and discontinuance.
- 1152. Change and number of counsel.
- 1153. Qualifications, skill and labor of counsel.
- 1154. Services and items taxable.
- 1155. — In general.
- 1156. — Particular items.
- 1157. — Particular services.
- 1158. — Legal assistance and research.
- 1159. Stage or condition of cause.

Costs and fee issues as to child custody, see CHILD CUSTODY. Costs and fee issues as to child support, see CHILD SUPPORT.
- 1160. — In general.
- 1161. — Temporary and pendente lite awards.
- 1162. — Nature of proceeding as factor in general.
- 1163. — Appeal or review.
- 1164. Calculation and apportionment in general.
- 1165. — In general.
- 1166. — Experts.
- 1167. — Other particular items and services.
- 1168. — Attorney fees.
 - (1). In general.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- (2). Adequacy or excessiveness.
- 1169. Credits and offsets.
- 1170. Applications and proceedings between parties.
 - (1). In general.
 - (2). Jurisdiction and reservation thereof.
 - (3). Time for proceedings.
 - (4). Notice and process.
 - (5). Pleading and dismissal.
 - (6). Evidence in general.
 - (7). Affidavit, summary or itemization.
 - (8). Hearing and determination.
 - (9). Judgment or order.
 - (10). Modification; opening and vacating.
 - (11). Construction, operation and effect.
- 1171. Claim by attorney or other service provider against party.
- 1172. — In general.
- 1173. — Right of action; standing.
- 1174. — Defense or bar to recovery in general.
- 1175. — Proceedings in general.
- 1176. — Intervention in divorce.
- 1177. Security for payment.
- 1178. Payment of costs and allowances.
- 1179. Enforcement and contempt.
- 1180. Inter-jurisdictional issues.
- 1181. Same-sex marriages.

(I) APPEAL.

- 1200. In general.
- 1201. Nature and form of remedy.
- 1202. Jurisdiction.
- 1203. Decisions reviewable.
- 1204. — In general.
- 1205. — Courts and other tribunals subject to review.
- 1206. — Nature of subject matter and character of parties.
- 1207. — Finality of determination.
- 1208. — Nature, scope and effect of decision.
- 1209. — Mode of rendition, form and entry of judgment or order.
- 1210. Right of review.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1211. — In general.
- 1212. — Persons entitled.
- 1213. — Estoppel, waiver, or agreements affecting right.
- 1214. Presentation and reservation in lower court of grounds of review.
- 1215. — In general.
- 1216. — Issues and questions in lower court.
- 1217. — Objections and motions, and rulings thereon.
- 1218. — Exceptions.
- 1219. — Motions for new trial.
- 1220. — Cases and questions reserved or certified.
- 1221. Parties.
- 1222. Transfer of cause.
- 1223. — In general.
- 1224. — Time of taking proceedings.
- 1225. — Petition or prayer, allowance and certificate or affidavit.
- 1226. — Payment of fees or costs, and bonds or other securities; in forma pauperis.
- 1227. — Writ of error, citation, or notice.
- 1228. — Entry, docketing and appearance.
- 1229. Effect of transfer of cause or proceedings therefor.
- 1230. — In general.
- 1231. — Powers and proceedings of lower court.
- 1232. — Jurisdiction acquired by appellate court.
- 1233. Supersedeas or stay of proceedings.
- 1234. Record.
- 1235. — In general.
- 1236. — Matters to be shown.
- 1237. — Scope and contents.
- 1238. — Necessity of bill of exceptions, case, or statement of facts.
- 1239. — Contents, making and settlement of case or statement of facts.
- 1240. — Abstracts.
- 1241. — Making, form and requisites of transcript or return.
- 1242. — Authentication and certification.
- 1243. — Transmission and filing.
- 1244. — Printing and service of copies.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1245. — Defects, objections, amendments and corrections.
- 1246. — Conclusiveness and effect.
- 1247. — Impeachment or contradiction.
- 1248. — Questions presented for review.
- 1249. — Matters not apparent of record.
- 1250. Assignment of errors.
- 1251. Briefs.
- 1252. Dismissal, withdrawal, or abandonment.
- 1253. — In general.
- 1254. — Mootness.
- 1255. Dockets, calendars, and proceedings preliminary to hearing.
- 1256. Hearing.
- 1257. — In general.
- 1258. — Rehearing.
- 1259. Review.
- 1260. — In general.
- 1261. — Scope, standards and extent, in general.
 - (1). In general.
 - (2). Questions considered.
 - (3). Issues not necessary to review.
 - (4). Interrelatedness of spousal support, allowances and property division.
- 1262. — Interlocutory, collateral, and supplementary proceedings and questions.
- 1263. — Parties entitled to allege error.
 - (1). In general.
 - (2). Estoppel.
- 1264. — Amendments.
- 1265. — Additional proofs.
- 1266. — De novo review.
 - (1). In general.
 - (2). Spousal support.
 - (3). — In general.
 - (4). — Modification.
 - (5). Counsel fees, costs and allowances.
 - (6). Disposition of property.
 - (7). Settlement agreements and stipulations.
 - (8). Enforcement and arrearages.
- 1267. Presumptions.
- 1268. — In general.
- 1269. — Burden of showing error.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1270. — Facts or evidence not shown by record.
 - (1). In general.
 - (2). Spousal support.
 - (3). Counsel fees, costs and allowances.
 - (4). Disposition of property.
 - (5). Modification proceedings.
 - (6). — In general.
 - (7). — Spousal support.
 - (8). — Disposition of property.
 - (9). — Settlement agreements.
 - (10). Enforcement and arrearages.
- 1271. — Spousal support.
- 1272. — Counsel fees, costs and allowances.
- 1273. — Disposition of property.
- 1274. — Settlement agreements and stipulations.
- 1275. — Modification proceedings.
 - (1). In general.
 - (2). Spousal support.
 - (3). Disposition of property.
 - (4). Settlement agreements and stipulations.
- 1276. — Enforcement and arrearages.
- 1277. Discretion.
- 1278. — In general.
- 1279. — Burden of showing grounds of review.
- 1280. — Injunction against disposition of property before award.
- 1281. — Spousal support.
 - (1). In general.
 - (2). Support pending proceedings.
 - (3). Award of gross sum; alimony in gross.
 - (4). Rehabilitative alimony.
 - (5). Modification.
 - (6). Commencement, duration, termination.
- 1282. — Counsel fees, costs and allowances.
- 1283. — Disposition of property.
 - (1). In general.
 - (2). Valuation.
 - (3). Modification and vacation.

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V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1284. — Settlement agreements and stipulations.
 - (1). In general.
 - (2). Modification and vacation.
- 1285. — Enforcement and arrearages.
- 1286. Questions of fact, verdicts and findings.
- 1287. — In general.
- 1288. — Spousal support.
 - (1). In general.
 - (2). Support pending proceedings.
 - (3). Award of gross sum; alimony in gross.
 - (4). Rehabilitative support.
 - (5). Modification.
 - (6). Commencement, duration, termination.
- 1289. — Counsel fees, costs and allowances.
- 1290. — Disposition of property.
 - (1). In general.
 - (2). Valuation.
 - (3). Modification and vacation.
- 1291. — Settlement agreements and stipulations.
 - (1). In general.
 - (2). Modification and vacation.
- 1292. — Enforcement and arrearages.
- 1293. — Findings of referee, master, commissioner, or auditor.
- 1294. — Refusal to find facts.
- 1295. — Questions of fact on motions or other interlocutory or special proceedings.
- 1296. Harmless error.
- 1297. — In general.
- 1298. — Spousal support.
- 1299. — Attorney fees or costs.
- 1300. — Property valuation and distribution.
- 1301. — Settlement agreements and stipulations.
- 1302. — Burden to show prejudice.
- 1303. — Presumption as to effect of error.
- 1304. — Error favorable to party complaining.
- 1305. — Interlocutory and preliminary proceedings in general.

V. SPOUSAL SUPPORT, ALLOWANCES, AND DISPOSITION OF PROPERTY.(Cont'd)

- 1306. — Spousal support pending proceedings.
- 1307. — Discovery.
- 1308. — Conduct of trial or hearing.
- 1309. — Reception of evidence.
- 1310. — Witnesses.
- 1311. — Admission and exclusion of evidence.
- 1312. — Instructions.
- 1313. — Verdict.
- 1314. — Findings and failure to make findings.
- 1315. — Judgment or order.
 - (1). In general.
 - (2). Modification and amendment.
 - (3). — In general.
 - (4). — Spousal support.
 - (5). — Property valuation and distribution.
- 1316. — Proceedings after judgment.
 - (1). In general.
 - (2). Enforcement, contempt, and arrears.
- 1317. Error waived in appellate court.
- 1318. Decisions of intermediary courts.
- 1319. Subsequent appeals.
- 1320. Determination and disposition of cause.
- 1321. — In general.
- 1322. — Spousal support.
 - (1). In general.
 - (2). Support pending proceedings.
- 1323. — Property.
 - (1). In general.
 - (2). Marital or separate property.
 - (3). Agreements and stipulations.
 - (4). Division and distribution in general.
 - (5). Debts and liabilities.
 - (6). Homestead or marital residence.
 - (7). Valuation.
- 1324. — Attorney fees and costs.
- 1325. Liabilities on bonds and undertakings.

VI. OPERATION AND EFFECT OF DIVORCE, AND RIGHTS OF DIVORCED PERSONS.

- 1350. In general.
- 1351. Limited divorce in general.

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VI. OPERATION AND EFFECT OF DIVORCE, AND RIGHTS OF DIVORCED PERSONS.(Cont'd)

- 1352. Divorce from bed and board; separation.
- 1353. Decree nisi.
- 1354. Absolute divorce.
- 1355. Status in general.
- 1356. Rights and liabilities in general.
- 1357. — In general.
- 1358. — Mutual rights and liabilities in general.
- 1359. — Rights and liabilities as to property in general.
- 1360. — Tenancies.
- 1361. — Personal rights and liabilities in general.
- 1362. Names.
- 1363. Right to marry; leave of court.
- 1364. Property not disposed of by judgment or decree.

VII. FOREIGN DIVORCES.

Foreign custody decrees, Hague Convention, and other international issues as to custody, see CHILD CUSTODY. Foreign child support decrees and other international issues as to child support, see CHILD SUPPORT.

- 1400. In general.
- 1401. Foreign adjudications recognized.
- 1402. — In general.
- 1403. — Reasons for recognition or refusal to recognize.
 - (1). In general.
 - (2). Comity.
 - (3). Full faith and credit.
- 1404. — Particular foreign divorces.
 - (1). In general.
 - (2). Dissolution of Indian marriage.
 - (3). Nevada divorces.
- 1405. — Validity of adjudication in general.
- 1406. — Grounds of divorce.
- 1407. — Nature of adjudication.
 - (1). In general.
 - (2). Finality.
 - (3). Limited divorce or separation.
- 1408. Jurisdiction of foreign court.
- 1409. — In general.
- 1410. — Right to inquire into jurisdiction.
- 1411. — Domicile or residence in general.

VII. FOREIGN DIVORCES.(Cont'd)

- 1412. — Genuineness and sufficiency of residence.
 - (1). In general.
 - (2). Necessity of bona fide residence or domicile.
 - (3). Length of residence.
- 1413. — Residence for purpose of securing divorce.
- 1414. — Matrimonial or separate domicile.
- 1415. — Jurisdiction of person.
- 1416. — Appearance or consent.
 - (1). In general.
 - (2). Effect in general.
 - (3). Domicile or residence of parties.
 - (4). Sufficiency of appearance or consent.
- 1417. — Recitals or findings of jurisdictional facts.
 - (1). In general.
 - (2). Conclusiveness and effect in general.
 - (3). Domicile or residence of parties.
- 1418. Defects as to process or other proceedings.
- 1419. — In general.
- 1420. — Process or notice in general.
- 1421. — Personal service, necessity, and effect in general.
- 1422. — Domicile or residence of parties.
 - (1). In general.
 - (2). Genuineness and sufficiency.
 - (3). Matrimonial domicile.
- 1423. — Substituted or constructive service in general.
 - (1). In general.
 - (2). Domicile or residence in general.
 - (3). Genuineness and sufficiency of domicile or residence.
 - (4). Matrimonial domicile.
- 1424. — Service by publication.
 - (1). In general.
 - (2). Domicile or residence in general.
 - (3). Genuineness and sufficiency of domicile or residence.
 - (4). Matrimonial domicile.
- 1425. — Service outside jurisdiction.
- 1426. — Appearance or consent.
- 1427. — "Mail order" decrees.

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VII. FOREIGN DIVORCES.(Cont'd)

- 1428. Fraud.
- 1429. — In general.
- 1430. — Nature of fraud in general.
- 1431. — Domicile or residence, fraud as to.
- 1432. — Process or service, fraud relating to.
- 1433. — False testimony.
- 1434. — Appearance, consent, or participation.
- 1435. Construction and operation.
- 1436. — In general.
- 1437. — Personal status and mutual rights and liabilities.
- 1438. — Right to remarry.
- 1439. — Merger and bar of causes of action and defenses.
- 1440. — Matters concluded.
- 1441. — Persons concluded.
 - (1). In general.
 - (2). Children.
 - (3). Subsequent spouse.
- 1442. — Estoppel against attack; laches.
 - (1). In general.
 - (2). Grounds of estoppel in general.
 - (3). Procuring or obtaining divorce.
 - (4). Remarriage.
 - (5). Laches.
- 1443. — Proceedings for enforcement or annulment.
- 1444. Support, maintenance, or alimony.
- 1445. — In general.
- 1446. — Conclusiveness and effect of foreign decree in general.
- 1447. — Foreign decree as precluding award of alimony or support.
 - (1). In general.
 - (2). Temporary allowances and counsel fees.
- 1448. — Superseding award of alimony or maintenance.
- 1449. — Enforcement of foreign decree in general.
- 1450. — Jurisdiction of person or property; process.

VII. FOREIGN DIVORCES.(Cont'd)

- (1). In general.
 - (2). Substituted or constructive service in general.
 - (3). Service by publication.
- 1451. — Finality of decree in general.
 - (1). In general.
 - (2). What decrees are final in general.
 - (3). Decrees subject to revision.
- 1452. — Enforcement as to installments accrued.
 - (1). In general.
 - (2). Decrees subject to revision as to accrued installments.
- 1453. — Defenses to enforcement.
- 1454. — Remedies and proceedings to enforce.
 - (1). In general.
 - (2). Equitable remedies.
 - (3). Contempt.
- 1455. — Modification.
- 1456. Disposition of property.
 - (1). In general.
 - (2). Real property.
 - (3). Joint or community property.
- 1457. Separation agreements and property settlements.
 - (1). In general.
 - (2). Validity of agreement.
- 1458. Pleading.
- 1459. — In general.
- 1460. — Sufficiency in general.
- 1461. — Alimony and disposition of property.
- 1462. — Issues, proof, and variance.
- 1463. Presumptions and burden of proof.
- 1464. — In general.
- 1465. — Validity of decree in general.
- 1466. — Jurisdiction of foreign court in general.
- 1467. — Domicile or residence.
- 1468. Admissibility of evidence.
- 1469. Weight and sufficiency of evidence.
- 1470. — In general.
- 1471. — Validity of decree in general.
- 1472. — Jurisdiction of foreign court.

135H. DOUBLE JEOPARDY

VII. FOREIGN DIVORCES.(Cont'd)

1473. — Domicile or residence.
 (1). In general.
 (2). Bona fide domicile or residence.
 (3). Residence for purpose of securing divorce.
1474. — Process and other proceedings.
1475. — Fraud.
1476. Questions for jury.

135. DOMICILE

SUBJECTS INCLUDED

Places of fixed habitation of individuals
Nature, acquisition and change thereof in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations, domicile of, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Particular purposes and subjects, application of the law of domicile to, see DIVORCE, ELECTION LAW, VENUE, and other specific topics

1. Nature and elements.
2. Domicile distinguished from residence.
3. Domicile of origin.
4. Domicile of choice and change of domicile.
 - (1). In general.
 - (2). Intent.
5. Domicile by operation of law.
6. Place of residence situated partly in different jurisdictions.
7. Evidence.
 - 7.1. — In general.
8. — Presumptions and burden of proof.
9. — Admissibility.
10. — Weight and sufficiency.
11. Questions for jury.

135H. DOUBLE JEOPARDY

SUBJECTS INCLUDED

The doctrines of double jeopardy, former jeopardy, autrefois acquit, and autrefois convict

Specific constitutional or statutory protections against multiple or repeated jeopardy of the same person for the same offense

Requirements that all offenses in a transaction be joined in a single prosecution

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Different offenses in the same transaction, generally, see CRIMINAL LAW

Prohibition of double punishment and limitations on sentencing for different offenses in the same transaction, see SENTENCING AND PUNISHMENT

Offenses included in other offenses, generally, see INDICTMENT AND INFORMATION

Collateral estoppel or res judicata effect of determinations in criminal prosecutions, see JUDGMENT

Pleading a former prosecution as a defense to another prosecution, see CRIMINAL LAW

Acquittal or conviction of offense as bar to prosecution for perjury committed on trial thereof, see PERJURY

- I. IN GENERAL, ¶1-20.
- II. PROCEEDINGS, OFFENSES, PUNISHMENTS, AND PERSONS INVOLVED OR AFFECTED, ¶21-50.
- III. ELEMENTS OF FORMER JEOPARDY, ¶51-80.
- IV. EFFECT OF PROCEEDINGS AFTER ATTACHMENT OF JEOPARDY, ¶81-130.
- V. OFFENSES, ELEMENTS, AND ISSUES FORECLOSED, ¶131-200.
 - (A) IN GENERAL, ¶131-160.
 - (B) INCLUDED OFFENSES, ¶161-180.
 - (C) IDENTITY OF PARTIES, ¶181-200.
- VI. WAIVER, ¶201-202.

I. IN GENERAL.

1. In general.
2. Constitutional and statutory provisions.

135H. DOUBLE JEOPARDY

I. IN GENERAL.(Cont'd)

3. Relation to collateral estoppel or res judicata.
4. Limit on court or legislature.
5. Prohibition of multiple proceedings or punishments.
 - 5.1. — In general.
6. — Multiple prosecutions.
7. Right to completion of trial by single tribunal.

II. PROCEEDINGS, OFFENSES, PUNISHMENTS, AND PERSONS INVOLVED OR AFFECTED.

21. In general.
22. Particular proceedings.
23. Civil or criminal nature.
24. Administrative or non-judicial proceedings; prison discipline.
25. Fines, penalties, and forfeitures.
26. Simultaneous proceedings; multiplicity.
27. Proof of claimed offenses in other proceedings.
28. Multiple sentences or punishments.
29. Sentencing proceedings; cumulative punishment.
 - 29.1. — In general.
30. — Enhanced offense or punishment.
31. Probation, parole, or sentence determination proceedings.
32. Appeal by government; mandamus or prohibition.
33. Juvenile proceedings.
34. Contempt.
35. Persons protected.

III. ELEMENTS OF FORMER JEOPARDY.

51. In general.
52. Character, constitution, and jurisdiction of court.
53. Fraudulent or collusive prosecution.
54. Preliminary or summary proceedings.
55. Indictment or information.
56. Arraignment and plea.
 - 56.1. — In general.
57. — Plea of guilty or nolo contendere.
58. Jury and oath.
59. Empanelling and swearing jury, or swearing witness and receiving evidence.
60. Verdict, judgment, or sentence.

III. ELEMENTS OF FORMER JEOPARDY.(Cont'd)

- 60.1. — In general.
61. — Directed verdict.
62. Juvenile proceedings.

IV. EFFECT OF PROCEEDINGS AFTER ATTACHMENT OF JEOPARDY.

81. In general.
82. Effect of proceedings before verdict.
 - 82.1. — In general.
83. — Removal and replacement of juror.
84. — Continuance or other temporary interruption; reopening or resubmission.
85. — Amendment of charges.
86. Retrial and premature termination of case in general.
87. Duration and termination of jeopardy, in general.
88. Dismissal or discharge in general.
 - 88.1. — In general.
89. — Nolle prosequi or discontinuance.
90. — Dismissal or discharge for want of probable cause; preliminary hearing discharge.
91. — Dismissal, etc., for defects in charges.
 - (1). In general.
 - (2). Variance.
92. — Delay; speedy trial issues.
93. — Want or insufficiency of evidence.
94. — Repeated terminations.
95. Mistrial or recusal.
 - 95.1. — In general.
96. — Consent or fault of accused.
97. — Fault of prosecution.
98. — Failure of jurors to agree.
99. — Manifest necessity; other grounds.
100. Acquittal.
 - 100.1. — In general.
101. — Appeal or other review of acquittal.
102. — Reuse of evidence.
103. — What constitutes acquittal, in general.
104. — Dismissal, nonsuit, or mistrial as acquittal.
105. Conviction in general.
106. Relief from guilty verdict; judgment n.o.v. or of acquittal.

135H. DOUBLE JEOPARDY

IV. EFFECT OF PROCEEDINGS AFTER ATTACHMENT OF JEOPARDY. (Cont'd)

- 107. Effect of arresting, vacating, or reversing judgment or sentence, or of granting new trial.
- 107.1. — In general.
- 108. — Particular grounds for relief.
- 109. — Sufficiency or insufficiency of evidence.
- 110. Procedure on review; further review.
- 111. Sentence beyond verdict.
- 112. Resentencing; increase of punishment.
- 112.1. — In general.
- 113. — Sentence on trial de novo; two tier system.
- 114. Modification or correction of sentence; cure of illegal sentence.
- 114.1. — In general.
- 115. — Judgment or sentence vacated or reversed on review or post-conviction motion.
- 116. — Partial invalidity; several counts or sentences.
- 117. — Sentence on probation revocation.
- 118. Effect of commencement or service of prior sentence; sentence credit.
- 119. Proceedings after discharge on habeas corpus.

V. OFFENSES, ELEMENTS, AND ISSUES FORECLOSED.

(A) IN GENERAL.

- 131. In general.
- 132. Identity of offenses; same offense.
- 132.1. — In general.
- 133. — Identity in law and fact.
- 134. — Several offenses in one act; separate statutory offenses and legislative intent.
- 135. — Proof of fact not required for other offense.
- 136. — "Same evidence" test; sufficiency of evidence of one offense to sustain conviction for the other.
- 137. — "Single transaction" test.
- 138. Compulsory joinder requirement.
- 139. Particular offenses, identity of.

Offenses are classified here in descending order; e.g., a case determining the propriety of prosecution or conviction for both larceny and burglary will be classified to

§144 whereas one involving burglary and homicide will be placed at §150.

- 139.1. — In general.
- 140. — Weapons offenses.
- 141. — Assault, battery, or armed violence.
- 142. — Motor vehicle and traffic offenses.
- 143. — Larceny; possession of stolen goods.
- 144. — Burglary.
- 145. — Robbery.
- 146. — Drugs and narcotics.
- 147. — Forgery.
- 148. — Sex offenses; obscenity.
- 149. — Kidnapping.
- 150. — Homicide.
 - (1). In general.
 - (2). Felony-murder or misdemeanor-manslaughter prosecution.
 - (3). Death of victim after earlier prosecution; new evidence.
- 151. — Conspiracy; racketeering.
 - (1). In general.
 - (2). Multiple conspiracies or prosecutions.
 - (3). Conspiracy and substantive or predicate offense.
 - (3.1). — In general.
 - (4). — Particular cases.
 - (5). — Drug or narcotics cases.
- 152. — Periods covered by prosecutions.

(B) INCLUDED OFFENSES.

- 161. Lesser offenses included in greater, in general.
- 162. What constitute lesser offenses.
- 163. Ruling on proceeding on one or more charges affecting remaining charges, in general.
- 164. Ruling on greater as bar to prosecution for lesser offense.
- 165. Ruling on lesser as bar to prosecution for greater offense.
- 166. Conviction of lower as acquittal of higher grade or degree of offense.
- 166.1. — In general.
- 167. — Plea of guilty or nolo contendere to lesser offense.
- 168. Prior inability to prosecute greater offense; jurisdictional questions.

135H. DOUBLE JEOPARDY

(C) IDENTITY OF PARTIES.

181. In general.
182. Crimes against different victims.
183. Offenses against different sovereignties or governmental units.
- 183.1. — In general.
184. — Proceedings in different courts, in general.
185. — Offenses against several states.
186. — Offenses against United States and a state or territory.
187. — Offenses against municipality and other governments.
188. Identity of defendants; jeopardy of co-defendants.

VI. WAIVER.

201. In general.
202. Plea of guilty, or nolo contendere.

141. EASEMENTS

SUBJECTS INCLUDED

Nature and incidents of privileges and servitudes of proprietors of real property in lands of others, independent of ownership of the soil

Creation thereof by reservation, grant, express or implied, or prescription

Use, transfer, and extinguishment thereof

Rights, powers and liabilities of proprietors of dominant and servient estates

Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adjoining landowners' mutual rights, duties and liabilities in general, see ADJOINING LANDOWNERS

Air space, rights in, see AVIATION

Licenses for use of real property, and distinction between them and easements, see LICENSES

Particular species of property, easements affecting, see MINES AND MINERALS,

PARTY WALLS, WATER LAW, and other specific topics

Profit a prendre, see LICENSES

Public easements and public utility easements, see DEDICATION, ELECTRICITY, GAS, HIGHWAYS, RAILROADS, TELECOMMUNICATIONS, WATER LAW

I. CREATION, EXISTENCE, AND TERMINATION, ¶1-37.

II. EXTENT OF RIGHT, USE, AND OBSTRUCTION, ¶38-72.

I. CREATION, EXISTENCE, AND TERMINATION.

1. Nature and elements of right.
2. Subject-matter and parties in general.
3. Easements appurtenant or in gross.
 - (1). In general.
 - (2). Ways.
4. Prescription.
5. — In general.
6. — Mode and extent of use.
7. — Duration and continuity of use.
 - (.5). In general.
 - (1). Beginning of required period.
 - (2). Use of less than 20 years.
 - (3). Use of 20 years or more.
 - (4). Period of limitation, or statutory period.
 - (5). Continuity of use.
 - (6). Interference with use.
8. — Adverse character of use.
 - (1). In general.
 - (2). Use by permission or agreement.
 - (4). Exclusiveness of use.
9. — Claim or color of right.
 - (1). In general.
 - (2). Duration of use.
10. — Acquisition of rights of way.
 - (1). In general.
 - (2). In public ways.
 - (3). Over railroad right of way.
 - (4). Through uninclosed lands.
11. — Acquisition of rights as to light, air, and view.
12. Express grant.
 - (1). In general.
 - (2). Sufficiency of words of conveyance in general.

141. EASEMENTS

I. CREATION, EXISTENCE, AND TERMINATION.(Cont'd)

- (3). Certainty.
- 13. Covenant operating as grant.
- 14. Exception or reservation.
 - (1). In general.
 - (2). Ways.
 - (3). Reservation for benefit of third person.
- 15. Implication.
- 15.1. — In general.
- 16. — Severance of ownership of dominant and servient tenements.
- 17. — Ways in general.
 - (1). In general.
 - (2). Sale of land bounded by way in general.
 - (3). Sale of land bounded by unopened way.
 - (4). Sale of platted land in general.
 - (5). Implied reservation.
- 18. — Ways of necessity.
 - (1). In general.
 - (2). Grant of tract partly or entirely surrounded by grantor's land.
 - (3). Existence of other means of access.
 - (4). Necessity of grant or privity of title.
 - (5). Grant of timber on tract inaccessible except over land of grantor or another.
 - (6). Access by waterway.
 - (7). Way over railroad right of way.
- 19. — Light, air, and view.
- 20. Right as against purchasers of servient tenement.
- 21. — In general.
- 22. — Continuous and apparent easements, and notice.
- 23. Severance of right.
- 24. Transfer of right.
- 25. Commencement and duration.
- 26. Termination in general.
 - (1). In general.
 - (2). Alterations in dominant estate.
 - (3). Cessation of necessity.
 - (4). Partial destruction of servient estate.
 - (5). Effect of termination.

I. CREATION, EXISTENCE, AND TERMINATION.(Cont'd)

- 27. Merger.
- 28. Release.
- 29. Extinguishment by agreement or license.
- 30. Abandonment or nonuser.
 - (1). In general.
 - (2). Easements created by grant or reservation.
 - (3). Time requisite.
- 31. Forfeiture for misuser.
- 32. Adverse possession.
- 33. Dedication or appropriation to public use.
- 34. Revival of lost right.
- 35. Pleading as defense.
- 36. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 37. Questions for jury.

II. EXTENT OF RIGHT, USE, AND OBSTRUCTION.

- 38. Relation between owners of dominant and servient tenements in general.
- 39. Extent of right.
- 40. — In general.
- 41. — By prescription.
- 42. — By express grant or reservation.
- 43. — By implication.
- 44. — Ways.
 - (1). In general.
 - (2). Extent of way.
- 45. — Light, air, and view.
- 46. Location.
- 47. — In general.
- 48. — Ways.
 - (1). In general.
 - (2). Persons entitled to locate way.
 - (3). Way existing at time of grant.
 - (4). Ways of necessity.
 - (5). Practical location by parties.
 - (6). Change of location.
- 49. — Deviation from way.
- 50. Mode of use.
- 51. Purposes of use.
- 52. Persons entitled to use.

141. EASEMENTS

II. EXTENT OF RIGHT, USE, AND OBSTRUCTION.(Cont'd)

- 53. Maintenance and repair.
- 54. Alteration.
- 55. Misuser.
- 56. Obstruction or disturbance.
- 57. — In general.
- 58. — Ways.
 - (1). In general.
 - (2). Structures in or over way.
 - (3). Fences and gates.
- 59. — Light, air, or view.
- 60. Removal of obstruction.
- 61. Actions for establishment and protection of easements.
 - (.5). In general.
 - (1). Nature and form of remedy in general.
 - (2). Injunction.
 - (3). Rights of action and conditions precedent.
 - (4). Jurisdiction.
 - (5). Time to sue and laches.
See also LIMITATION OF ACTIONS.
 - (6). Temporary injunction.
 - (7). Parties.
 - (8). Pleading.
 - (9). Evidence.
 - (9.5). Trial.
 - (10). Nature and extent of relief in general.
 - (11). Compensation or damages instead of injunction.
 - (12). Judgment or decree and enforcement thereof.
- 62. Actions for injuries to, or by use of, easements.
 - 62.1. — In general.
- 63. — Nature and form; injunction.
- 64. — Rights of action and defenses.
- 65. — Jurisdiction and venue.
- 66. — Time to sue and limitations.
- 67. — Parties.
- 68. — Pleading.
- 69. — Evidence.
- 70. — Damages.
- 71. — Trial.
- 72. — Judgment and enforcement thereof.

141E. EDUCATION

SUBJECTS INCLUDED

Institutions for instruction of students, whether maintained as private schools, or maintained by government as common or public schools

Bodies, incorporated or unincorporated, formed for the instruction of students in one or more courses of study more advanced than those pursued in ordinary schools or academies

Bodies formed for maintenance of such institutions, whether unincorporated or incorporated by special charters or under general laws, or formed by territorial subdivision of counties, towns, or cities, etc.

Constitutional and statutory provisions relating thereto

Public supervision and regulation of such schools in general

Incorporation and organization of private schools, academies, etc., and public aid and regulation thereof

Creation, organization, boundaries, alteration and dissolution of school districts

School meetings and government and officers of school districts

School lands, funds, buildings, furniture, textbooks, and other property and supplies, and contracts relating thereto

Indebtedness, bonds, warrants, and other securities of school districts

Taxation by school districts

Qualifications, employment and discharge, and compensation of teachers and other specialized officers and employees

Admission and attendance of pupils

Curriculum, rules, discipline and government of schools

School desegregation and rights of students with disabilities

Interscholastic and intercollegiate associations

Student financial aid

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Child abuse reporting, see INFANTS

Civil rights laws, application of, see CIVIL RIGHTS

141E. EDUCATION

Constitutional guarantees generally, see CONSTITUTIONAL LAW

Corporations or unincorporated associations in general, see ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS

Employee organizations and collective bargaining, see LABOR AND EMPLOYMENT

Family Educational Rights and Privacy Act (FERPA), see RECORDS

Flight schools, see AVIATION

Indian schools, see INDIANS ¶140

Injuries at sporting events to participants or spectators, see PUBLIC AMUSEMENT AND ENTERTAINMENT

Liability of school district for vehicle-related injuries, see AUTOMOBILES

Liability of school district to school bus passengers, see CARRIERS

Military base schools, see ARMED SERVICES

Preschool programs (except as program requirements pertain to teachers and curriculum), see INFANTS and PUBLIC ASSISTANCE

Public lands reserved as school lands or university lands, but not allotted to school districts or universities, see PUBLIC LANDS

School meal programs, see PUBLIC ASSISTANCE

Schooling for adult prisoners, see PRISONS

Tax exemption for school or college property, see TAXATION

Vocational rehabilitation assistance for attending college, see PUBLIC ASSISTANCE

I. IN GENERAL, ¶1-9.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS, ¶10-909.

(A) ESTABLISHMENT, OPERATION, AND REGULATION IN GENERAL, ¶10-389.

1. IN GENERAL, ¶10-29.
2. CREATION, ALTERATION, AND DISSOLUTION OF DISTRICTS, ¶30-69.
3. GOVERNMENT AND BOARDS, ¶70-99.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS—Cont'd

(A) ESTABLISHMENT, OPERATION, AND REGULATION IN GENERAL—Cont'd

4. DISTRICT PROPERTY IN GENERAL, ¶100-110.
5. SCHOOL BUILDINGS AND GROUNDS, ¶111-139.
6. DISTRICT CONTRACTS, ¶140-189.
7. DISTRICT LIABILITIES IN GENERAL, ¶190-209.
8. SCHOOL AID AND FUNDING, ¶210-229.
9. ADMINISTRATION OF FINANCES; INDEBTEDNESS, ¶230-279.
10. SCHOOL TAXES, ¶280-359.
11. CLAIMS AGAINST DISTRICT, ¶360-371.
12. ACTIONS IN GENERAL, ¶372-389.

(B) TAXPAYERS' SUITS AND OTHER REMEDIES, ¶390-409.

(C) OFFICERS AND EMPLOYEES, ¶410-439.

(D) TEACHERS AND EDUCATION PROFESSIONALS, ¶440-649.

1. IN GENERAL, ¶440-489.
2. TENURE; CONTINUING CONTRACT STATUS, ¶490-509.
3. COMPENSATION, ¶510-539.
4. PENSIONS AND BENEFITS, ¶540-559.
5. ADVERSE PERSONNEL ACTIONS, ¶560-629.
6. INJURIES TO AND LIABILITY THEREFOR, ¶630-649.

(E) PUPILS OR STUDENTS, ¶650-829.

1. IN GENERAL, ¶650-669.
2. ADMISSION AND ATTENDANCE, ¶670-709.
3. CURRICULUM AND INSTRUCTION, ¶710-729.
4. CONTROL AND DISCIPLINE, ¶730-759.
5. EXTRACURRICULAR ACTIVITIES, ¶760-769.
6. TRANSPORTATION, ¶770-779.
7. GRADUATION AND DIPLOMA, ¶780-789.
8. INJURIES TO PUPILS OR STUDENTS, ¶790-829.

(F) RACIAL SEGREGATION AND DESEGREGATION, ¶830-859.

141E. EDUCATION

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS—Cont'd

(G) CHILDREN WITH DISABILITIES; SPECIAL EDUCATION, ☞860-909.

III. PRIVATE PRIMARY AND SECONDARY SCHOOLS, ☞910-959.

IV. INTERSCHOLASTIC ASSOCIATIONS, ☞960-969.

V. POSTSECONDARY PROPRIETARY SCHOOLS; VOCATIONAL AND OTHER PARTICULARIZED TRAINING, ☞970-989.

VI. COLLEGES AND UNIVERSITIES, ☞990-1229.

(A) ESTABLISHMENT AND REGULATION IN GENERAL, ☞990-1009.

(B) GOVERNANCE AND BOARDS, ☞1010-1019.

(C) PROPERTY, ☞1020-1029.

(D) CONTRACTS, ☞1030-1050.

(E) LIABILITIES, ☞1051-1059.

(F) FISCAL MATTERS, ☞1060-1079.

(G) CLAIMS, ☞1080-1089.

(H) ACTIONS, ☞1090-1109.

(I) OFFICERS AND EMPLOYEES, ☞1110-1129.

(J) FACULTY AND EDUCATION PROFESSIONALS, ☞1130-1159.

(K) STUDENTS, ☞1160-1219.

(L) INTERCOLLEGIATE ASSOCIATIONS, ☞1220-1229.

VII. STUDENT FINANCIAL AID, ☞1230-1243.

I. IN GENERAL.

1. In general.
2. Right to education in general.
3. What law governs.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.

(A) ESTABLISHMENT, OPERATION, AND REGULATION IN GENERAL.

1. IN GENERAL.

10. In general.
11. Power to establish and maintain in general.
12. Constitutional and statutory provisions.
13. — In general.
14. — Purpose and construction in general.
15. — Validity of statutes.
16. — Retroactive operation.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS. (Cont'd)

17. School system, and establishment of schools in general.
18. Discontinuance of schools in general.
19. Application of school system to cities and incorporated towns and villages.
20. Charter schools.
21. — In general.
22. — Application and approval.
23. — Termination of charter.
24. — Judicial review.
25. — Construction and operation of charter.
26. State educational institutions.
27. Application to school purposes of school lands and proceeds thereof.
28. Regulation in general.
29. Judicial supervision in general.

2. CREATION, ALTERATION, AND DISSOLUTION OF DISTRICTS.

30. In general.
31. Constitutional and statutory provisions.
32. — In general.
33. — Purpose and construction in general.
34. — Validity of statutes.
35. — Retroactive operation.
36. Nature and status as corporations.
37. Creation and organization.
38. — In general.
 - (1). In general.
 - (2). Attacking legality of organization.
 - (3). Curative statute.
39. — Independent and other districts in incorporated cities, towns, and villages.
40. — Rural independent districts and other special organizations.
41. — Proceedings for organization.
42. De facto districts.
43. Unorganized territory.
44. Territorial extent and boundaries.
45. Alteration and creation of new districts.
46. — In general.
47. — Change of boundaries.
48. — Consolidation, and union districts.
49. — Division.
50. — Change of organization to or from independent district.

141E. EDUCATION

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 51. — Powers of boards or officers, and of courts.
- 52. — Proceedings in general.
 - (1). In general.
 - (2). Meetings and mode of action in general.
 - (3). Petition or consent.
 - (4). Notice and hearing.
 - (5). Evidence.
 - (6). Records, orders, and reports.
- 53. — Submission of question to popular vote.
- 54. — Review of proceedings.
 - (1). In general.
 - (2). Parties; standing.
 - (3). Scope of review.
- 55. — Operation and effect.
- 56. — Adjustment of pre-existing rights and liabilities.
 - (1). In general.
 - (2). Property and funds.
 - (3). Liabilities.
 - (4). Proceedings for apportionment of assets and liabilities.
 - (5). Actions on pre-existing liabilities.
- 57. Formation of districts and annexation and detachment of territory for special purposes.
- 58. — In general.
- 59. — High school and graded school districts.
- 60. — Joint districts.
- 61. Enumeration of children for school purposes.
- 62. Dissolution.
- 63. — In general.
- 64. — Proceedings and review.
- 65. — Operation and effect.

3. GOVERNMENT AND BOARDS.

- 70. Administration of school affairs in general.
- 71. — In general.
- 72. — Administrative oversight.
- 73. Constitutional and statutory provisions.
- 74. — In general.
- 75. — Purpose and construction in general.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 76. — Validity of statutes.
- 77. — Retroactive operation.
- 78. State boards and officers.
- 79. — In general.
- 80. — Appointment and tenure of officers.
- 81. — Powers and duties.
- 82. — Meetings; proceedings.
- 83. — Judicial review.
- 84. County or district boards.
- 85. — In general.
- 86. — Creation and constitution.
- 87. — Appointment or election, qualification, and tenure.
 - (1). In general.
 - (2). Redistricting; Voting Rights Act.
 - (3). Eligibility and qualification.
 - (4). De facto officers.
 - (5). Term, vacancies, and holding over.
 - (6). Grounds for removal or other adverse action.
 - (7). Proceedings and review.
- 88. — Compensation.
 - (1). In general.
 - (2). Reimbursement of expenses; indemnification.
 - (3). Pensions and benefits.
- 89. — Powers and functions in general.
- 90. — Duties and liabilities in general.
- 91. — Criminal responsibility.
- 92. — Mode of action.
- 93. — Meetings.
- 94. — Minutes and records.
- 95. — Orders and resolutions.
- 96. — Operation and effect of decisions.
- 97. — Appeals from decisions.
- 98. Officers of towns as school officers.
- 99. District meetings in general.

4. DISTRICT PROPERTY IN GENERAL.

- 100. In general.
- 101. Constitutional and statutory provisions.
- 102. Capacity to acquire and hold property.
- 103. Acquisition, use, and disposition of property in general.
- 104. — In general.
- 105. — Proceedings for acquisition.

141E. EDUCATION

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 106. — Construction of grant; reversion to grantor.
- 107. — Sale or lease.
- 108. School furniture, books, apparatus, and other appliances.
- 109. Telecommunications and computer equipment.
- 110. School libraries.

5. SCHOOL BUILDINGS AND GROUNDS.

- 111. In general.
- 112. Constitutional and statutory provisions.
- 113. Authority and duty to provide.
- 114. Location.
- 115. — In general.
- 116. — Change of site.
- 117. — Proceedings and review.
- 118. Purchase or lease.
- 119. Construction.
- 120. Control and use in general.
- 121. — In general.
- 122. — Religious displays.
- 123. Equal access to facilities.
- 124. — In general.
- 125. — Limited open forum.
- 126. — Access to religious groups.
- 127. — Access to nonreligious groups.
- 128. Care, maintenance, and repairs.
- 129. Closure of school.
- 130. Sale or other disposition.
- 131. Charter school facilities.

6. DISTRICT CONTRACTS.

- 140. In general.
- 141. Constitutional and statutory provisions.
- 142. — In general.
- 143. — Purpose and construction in general.
- 144. — Validity of statutes.
- 145. — Retroactive operation.
- 146. Capacity of district to contract in general.
- 147. Powers of officers to contract; financial interest.
- 148. Power to bind successors.
- 149. Appropriation or provision for payment as prerequisite of contract.
- 150. Bidding and bid protests.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 151. — In general.
- 152. — Request for bids.
- 153. — Bidders.
- 154. — Bids.
- 155. — Acceptance or rejection.
- 156. — Award.
- 157. — Bid protests.
- 158. — Bus transportation contracts.
- 159. Contractor bonds.
- 160. — In general.
- 161. — Claims and persons secured.
- 162. — Actions on bonds.
- 163. — Rights and remedies of sureties.
- 164. Making, requisites, and validity.
- 165. Unauthorized or illegal contracts.
- 166. — In general.
- 167. — Ratification.
- 168. Implied contracts.
- 169. Construction and operation.
- 170. — In general.
- 171. — Parties; third-party beneficiaries.
- 172. — Extra costs or expenses.
- 173. Modification and rescission.
- 174. Performance or breach.
- 175. — In general.
- 176. — Miscellaneous acts or conduct constituting breach.
- 177. — Bus transportation contracts.
- 178. Rights and remedies of contractors.
- 179. Rights and remedies of third parties.
- 180. Rights and remedies of district.

7. DISTRICT LIABILITIES IN GENERAL.

- 190. In general.
- 191. Constitutional and statutory provisions.
- 192. District expenses and charges.
- 193. Liabilities specially imposed by statute.
- 194. Torts in general.
- 195. Liability in general.
- 196. Duty and standard of care.
- 197. Liability for acts of employees, and respondeat superior.
- 198. Negligent hiring, supervision, retention, or training.
- 199. Immunity in general.
- 200. Governmental or proprietary functions in general.

141E. EDUCATION

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 201. Particular injuries.
- 202. — In general.
- 203. — Premises liability.
- 204. — Intentional torts in general.
- 205. — Nuisance.
- 206. — Other particular injuries to persons other than students or teachers.

8. SCHOOL AID AND FUNDING.

- 210. In general.
- 211. Constitutional and statutory provisions.
- 212. — In general.
- 213. — Purpose and construction in general.
- 214. — Validity of statutes.
- 215. — Retroactive operation.
- 216. Creation of funds.
- 217. Investment and administration.
- 218. Apportionment and disbursement.
- 219. — In general.
- 220. — Federal aid.
- 221. — Apportionment according to school attendance.
- 222. — Enumeration of children as basis of apportionment.
- 223. — Schools in cities.
- 224. — Funding insurance of school property.
- 225. — Illegal apportionment or disbursement.
- 226. Desegregation funding.
- 227. Aid to charter schools.
- 228. Aid for special education.

9. ADMINISTRATION OF FINANCES; INDEBTEDNESS.

- 230. In general.
- 231. Constitutional and statutory provisions.
- 232. — In general.
- 233. — Purpose and construction in general.
- 234. — Validity of statutes.
- 235. — Retroactive operation.
- 236. Power to incur indebtedness and expenditures in general.
- 237. Limitation of amount.
- 238. — In general.
- 239. — Computation.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 240. Submission of question to popular vote.
- 241. Borrowing money in general.
- 242. Aid to corporations and stock subscriptions.
- 243. Power to make public improvements.
- 244. Effect of invalidity of debt or expenditure.
- 245. Administration of finances in general.
- 246. — In general.
- 247. — Custody of funds in general.
- 248. — Deposits in banks.
- 249. — Reports and statements; budgeting.
- 250. Appropriations.
- 251. Payment of indebtedness in general.
- 252. Warrants, orders, and certificates of indebtedness.
- 253. — In general.
- 254. — Issuance, requisites, and validity.
- 255. — Construction and operation in general.
- 256. — Negotiability and transfer.
- 257. — Payment.
- 258. — Rights and remedies of holders.
- 259. Bills and notes.
- 260. Bonds.
- 261. — In general.
- 262. — Authority to issue bonds in general.
- 263. — Funding indebtedness.
- 264. — Limitation of amount.
- 265. — Conditions precedent and preliminary proceedings.
 - (1). In general.
 - (2). Submission of question to popular vote.
 - (3). Provision for payment.
 - (4). Proceedings to determine validity of bonds.
- 266. — Sale or other disposition of bonds by school district.
- 267. — Form, execution, and issuance of bonds.
- 268. — Construction and operation.
- 269. — Validity of bonds in general.
- 270. — Ratification and estoppel.
- 271. — Payment and redemption.
- 272. — Rights and remedies of holders.

141E. EDUCATION

10. SCHOOL TAXES.

- 280. In general.
- 281. Constitutional and statutory provisions.
- 282. — In general.
- 283. — Purpose and construction in general.
- 284. — Validity of statutes.
- 285. — Retroactive operation.
- 286. Power and duty to tax.
- 287. Purposes and grounds.
- 288. Amount of tax.
- 289. Persons and property liable.
- 290. — In general.
- 291. — Exemptions.
- 292. Levy and assessment.
- 293. — In general.
- 294. — Making, requisites, and validity in general.
- 295. — Time and order of levy.
- 296. — Submission of question to popular vote.
- 297. — Statement of purpose of tax.
- 298. — Certificates, estimates, and determination of rate or amount of levy.
- 299. — Equalization and review of assessment.
- 300. Lien.
- 301. Payment.
- 302. Collection and enforcement of school taxes in general.
- 303. — In general.
- 304. — Authority to collect and failure to collect.
- 305. — Contracts for collection.
- 306. — Collectors.
 - (1). In general.
 - (2). Compensation, commissions, and expenses.
 - (3). Accounting for taxes collected.
 - (4). Official bonds.
 - (5). Criminal responsibility.
- 307. Personal liability for taxes.
- 308. Summary remedies.
- 309. Equitable remedy.
- 310. Action for taxes.
- 311. — In general.
- 312. — Persons entitled to sue.
- 313. — Right of action and defenses.
- 314. — Process and appearance.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 315. — Time to sue and limitations.
- 316. — Parties.
- 317. — Pleading.
- 318. — Evidence.
- 319. — Trial.
- 320. — Judgment.
- 321. — Review.
- 322. Remedies for wrongful enforcement.
- 323. — In general.
- 324. — Injunction.
- 325. Proceedings for judgment against real property.
- 326. — In general.
- 327. — Process and appearance.
- 328. — Pleading.
- 329. — Evidence.
- 330. — Trial.
- 331. — Judgment.
- 332. — Review.
- 333. — Costs.
- 334. Sale of land.
- 335. — In general.
- 336. — Notice.
- 337. — Purchase by county, city, or district; compromise of tax.
- 338. — Validity of sale.
- 339. — Deficiency after sale.
- 340. Tax titles.
- 341. — In general.
- 342. — Rights of purchaser.
- 343. — Deeds.
- 344. Redemption.
- 345. Penalties and interest.
- 346. — In general.
- 347. — Abatement.
- 348. Remedies for erroneous taxation.
- 349. Assessments and special taxes for particular purposes.
- 350. — In general.
- 351. — School buildings and sites.
- 352. — High schools or graded schools.
- 353. — Payment of indebtedness.
- 354. Poll taxes.
- 355. Disposition of proceeds of taxes and other revenue.

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11. CLAIMS AGAINST DISTRICT.

- 360. In general.
- 361. Constitutional and statutory provisions.
- 362. Notice, demand, or presentation of claim.
- 363. — In general.
- 364. — Service or presentation; timeliness.
- 365. — Excuses for, and relief from, delay or failure.
- 366. — Form and sufficiency.
- 367. — Waiver and estoppel.
- 368. Audit and allowance.
- 369. Review of action on claims.
- 370. Making or presentation of false claims.

12. ACTIONS IN GENERAL.

- 372. In general.
- 373. Constitutional and statutory provisions.
- 374. Capacity to sue or be sued.
- 375. Employment of counsel.
- 376. Rights of action and defenses.
- 377. Conditions precedent.
- 378. Jurisdiction and venue.
- 379. Time to sue and limitations.
- 380. Parties; use of name of district or of officers.
- 381. Process and appearance.
- 382. Pleading.
- 383. Evidence.
- 384. Trial.
- 385. Judgment.
- 386. Execution and enforcement of judgment.
- 387. Costs and fees.

(B) TAXPAYERS' SUITS AND OTHER REMEDIES.

- 390. In general.
- 391. Constitutional and statutory provisions.
- 392. Restraining action by board or officers.
- 393. — In general.
- 394. — Unauthorized or illegal acts.
- 395. — Incurring indebtedness or expenditure.
- 396. — Acquisition, use, and disposition of property.
- 397. — Misapplication of funds.
- 398. Compelling action by board or officers.
- 399. Actions.
- 400. — In general.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 401. — Time to sue and limitations.
- 402. — Conditions precedent in general.
- 403. — Requesting board or officers to bring action.
- 404. — Pleading and motions.
- 405. — Evidence.
- 406. — Costs and fees.

(C) OFFICERS AND EMPLOYEES.

- 410. In general.
- 411. Appointment and tenure.
- 412. — In general.
- 413. — Eligibility and qualification.
- 414. — Certificate or license.
- 415. — Employment contracts.
- 416. — Tenured status.
- 417. — Term of office, vacancies, and holding over.
- 418. — Grounds for removal or other adverse action.
- 419. — Principals.
- 420. — Proceedings and review.
- 421. Title to and possession of office.
- 422. Powers and functions in general.
- 423. Duties and liabilities in general.
- 424. Liability for school funds.
- 425. Liabilities on official bonds.
- 426. Criminal responsibility.
- 427. Compensation.
- 428. — In general.
- 429. — Reimbursement of expenses; indemnification.
- 430. — Pensions and benefits.
- 431. Charter school employees.
- 432. Actions.

(D) TEACHERS AND EDUCATION PROFESSIONALS.

1. IN GENERAL.

- 440. In general.
- 441. Constitutional and statutory provisions.
- 442. — In general.
- 443. — Purpose and construction in general.
- 444. — Validity of statutes.
- 445. — Retroactive operation.
- 446. Regulation in general.
- 447. Teacher training.

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II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 448. Certificate or license.
- 449. — In general.
- 450. — Qualification; examination.
- 451. — Requisites to appointment or employment.
- 452. — Revocation or suspension.
 - (1). In general; grounds.
 - (2). Proceedings and review.
- 453. Employment in general.
- 454. Selection and appointment.
- 455. — In general.
- 456. — Eligibility and qualification.
- 457. — Nomination by district boards.
- 458. — Recommendation by superintendent.
- 459. — Civil service laws and examinations.
- 460. Term of employment in general.
- 461. Leave of absence.
- 462. — In general.
- 463. — Sabbatical.
- 464. Contracts of employment.
- 465. — In general.
- 466. — Making, requisites, and validity.
 - (1). In general.
 - (2). Authority to contract in general.
 - (3). Authority to bind successors.
 - (4). Requisites and validity in general.
 - (5). Formal requisites.
 - (6). Ratification and estoppel.
- 467. — Construction and operation.
- 468. — Performance or breach.
- 469. — Remedies for enforcement.
- 470. Resignation or abandonment.
- 471. — In general.
- 472. — Acceptance and withdrawal.
- 473. Duties and liabilities.
- 474. — In general.
- 475. — Immunity.
- 476. — Supervision of pupils in general.
- 477. — Extracurricular activities.
- 478. — Criminal responsibility.
- 479. Rules and regulations.

2. TENURE; CONTINUING CONTRACT STATUS.

- 490. In general.
- 491. Constitutional and statutory provisions.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 492. — In general.
- 493. — Purpose of statutes.
- 494. — Construction and operation in general.
- 495. Persons entitled.
- 496. Substitute teachers.
- 497. Length of service and probation.
- 498. — In general.
- 499. — Calculation of probationary period.
- 500. — Tenure by estoppel.
- 501. Schools affected.
- 502. Effect of attaining tenure.
- 503. Retention or waiver of rights.
- 504. Abrogation or modification of rights.
- 505. Proceedings and review.

3. COMPENSATION.

- 510. In general.
- 511. Constitutional and statutory provisions.
- 512. — In general.
- 513. — Purpose and construction in general.
- 514. — Validity of statutes.
- 515. — Retroactive operation.
- 516. Effect of closing of school.
- 517. Overtime compensation.
- 518. Compensation during absence.
- 519. Compensation on removal, suspension, or resignation.
- 520. Reimbursement of expenses; indemnification.
- 521. Rate or amount of compensation.
- 522. — In general.
- 523. — Salary schedules and minimums.
- 524. — Service credit.
- 525. — Increases, bonuses, and reductions.
- 526. Payment, and orders therefor.
- 527. Actions to recover compensation.
- 528. — In general.
- 529. — Time to sue and limitations.
- 530. — Parties.
- 531. — Pleading.
- 532. — Evidence.
- 533. — Trial and judgment.

4. PENSIONS AND BENEFITS.

- 540. In general.

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II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 541. Funds and contributions.
- 542. Eligibility for, and right to pension or benefits in general.
- 543. Insurance.
- 544. Disability benefits.
- 545. Death benefits.
- 546. Amount and computation in general.
- 547. Service credit.
- 548. Application and proceedings.
- 549. — In general.
- 550. — Time for filing.
- 551. — Evidence.
- 552. — Review.
- 553. Revocation or suspension.
- 554. — In general.
- 555. — Proceedings and review.

5. ADVERSE PERSONNEL ACTIONS.

- 560. In general; authority to take adverse action.
- 561. Constitutional and statutory provisions.
- 562. Types of adverse action.
- 563. — In general.
- 564. — Dismissal or nonrenewal.
- 565. — Demotion or nonpromotion.
- 566. — Transfer or reassignment.
- 567. — Constructive discharge.
- 568. — Desegregation and consequent adverse action.
- 569. — Other types.
- 570. Effect of tenure or lack thereof.
- 571. Grounds for adverse action.
- 572. — In general.
- 573. — Conduct unbecoming a teacher in general.
- 574. — Abolition of position; reduction in staff.
- 575. — Classroom performance; incompetency.
- 576. — Unauthorized or excessive absence.
- 577. — Insubordination.
- 578. — Immoral or criminal conduct in general.
- 579. — Corporal punishment; excessive force.
- 580. — Sexual misconduct.
- 581. — Age; mandatory retirement.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 582. — Marital status.
- 583. — Pregnancy; maternity leave.
- 584. — Exercise of rights; retaliation.
 - (1). In general.
 - (2). Protected activities in general.
 - (3). Motive, intent, and pretext.
 - (4). Causation.
- 585. — Reporting or opposing wrongdoing; criticism and “whistleblowing”.
- 586. — Other particular grounds.
- 587. — Remediable grounds; necessity of warnings.
- 588. Charter school teachers.
- 589. Proceedings.
- 590. — In general.
- 591. — Settlements.
- 592. — Time; continuance.
- 593. — Notice and statement of reasons or grounds.
 - (1). In general.
 - (2). Nonrenewal.
- 594. — Discovery.
- 595. — Medical examination.
- 596. — Hearing officer or panel.
- 597. — Right to hearing.
- 598. — Conduct of hearing.
- 599. — Right to counsel.
- 600. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Nonrenewal.
 - (4). Weight and sufficiency.
- 601. — Determination.
- 602. — Administrative review.
- 603. — Judicial review.
 - (1). In general.
 - (2). Time for review.
 - (3). Review on certiorari.
 - (4). Scope of review.
 - (5). Determination and disposition.
 - (6). Further appellate review.
- 604. Actions.
- 605. — In general.
- 606. — Immunity.
- 607. — Wrongful dismissal.
- 608. — Exhaustion of remedies.

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II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 609. — Time to sue and limitations.
- 610. — Parties.
- 611. — Pleadings.
- 612. — Evidence.
 - (1). In general.
 - (2). Weight and sufficiency.
- 613. — Trial.
- 614. — Damages.
- 615. — Costs and fees.
- 616. Reinstatement; back pay.
- 617. — In general.
- 618. — Reemployment preference; recall list.
- 619. — Proceedings and review.

6. INJURIES TO AND LIABILITY THEREFOR.

- 630. In general.
- 631. Duty and standard of care in general.
- 632. Premises liability.
- 633. Injuries caused by students.
- 634. Other particular injuries.
- 635. Actions.
- 636. — In general.
- 637. — Conditions precedent.
- 638. — Jurisdiction and venue.
- 639. — Time to sue and limitations.
- 640. — Parties.
- 641. — Process and appearance.
- 642. — Pleading.
- 643. — Evidence.
- 644. — Trial.
- 645. — Judgment.
- 646. — Execution and enforcement of judgment.
- 647. — Costs and fees.

(E) PUPILS OR STUDENTS.

1. IN GENERAL.

- 650. In general.
- 651. Constitutional and statutory provisions.
- 652. — In general.
- 653. — Purpose and construction in general.
- 654. — Validity of statutes.
- 655. — Retroactive operation.
- 656. Right to instruction in general.
- 657. Homeless children.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 658. Eligibility.
- 659. — In general.
- 660. — Age.
- 661. — Residence.
 - (1). In general.
 - (2). Child not residing with parent or guardian.
- 662. — Marital status; pregnancy.

2. ADMISSION AND ATTENDANCE.

- 670. In general.
- 671. Assignment or admission to particular schools.
- 672. — In general.
- 673. — Transfers.
- 674. — Preparatory high school.
- 675. — Proceedings to compel admission.
- 676. Health regulations.
- 677. — In general.
- 678. — Exclusion of child with contagious disease.
- 679. — Availability of prophylactics.
- 680. — Vaccination.
 - (1). In general.
 - (2). Existence of epidemic.
- 681. Payment for tuition and fees.
- 682. — In general.
- 683. — Nonresident pupils or transfers.
- 684. — Rate and amount.
- 685. — Actions.
- 686. Compulsory attendance.
- 687. — In general.
- 688. — Criminal liability of parent or guardian.
- 689. — Exceptions.
 - (1). In general.
 - (2). Marriage.
 - (3). Private schools.
 - (4). Religious belief.
 - (5). Other exceptions.
- 690. Truancy.
- 691. — In general.
- 692. — Nature of liability.
- 693. — Truant officers.
- 694. — Truant schools.
- 695. — Liability of parents.
- 696. School terms, vacations, and holidays.

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II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 697. Grade levels and departments.
- 698. Home schooling.
- 699. — In general.
- 700. — Standards and eligibility.
- 701. — Proceedings and review.

3. CURRICULUM AND INSTRUCTION.

- 710. In general.
- 711. Judicial supervision in general.
- 712. Advanced placement.
- 713. Telecommunications; computerized instruction.
- 714. Foreign language instruction.
- 715. Remedial instruction for limited English proficiency; bilingual education.
- 716. Gifted children programs.
- 717. Health or sex education.
- 718. Vocational education.
- 719. Textbooks and instructional materials.
- 720. — In general.
- 721. — Selection or adoption and change.
- 722. — Duty to furnish.
- 723. Religious instruction and reading of religious texts.
- 724. — In general.
- 725. — Prayer and meditation.
- 726. — Sectarian texts and instruction.
- 727. — Teaching religiously objectionable subjects.
- 728. — Evolution and creationism.

4. CONTROL AND DISCIPLINE.

- 730. In general.
- 731. Authority in general.
- 732. Regulation of conduct.
- 733. — In general.
- 734. — Authority to make rules.
- 735. — Reasonableness and validity in general.
- 736. — Construction and operation.
- 737. Violation of rules and offenses in general.
- 738. Interrogation by school personnel.
- 739. Speech and assembly; demonstrations.
- 740. Grooming and dress.
- 741. Possession or use of contraband.
- 742. Searches and seizures.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 743. — In general.
- 744. — Warrantless searches; reasonable suspicion.
- 745. — Searches and testing for drugs and alcohol.
- 746. Punishment.
- 747. — In general.
- 748. — Academic sanctions.
- 749. — Restrictions on extracurricular activities.
- 750. — Corporal punishment.
- 751. — Expulsion or suspension.
 - (1). In general.
 - (2). Grounds.
- 752. Proceedings in general.
- 753. Right to counsel.
- 754. Notice and hearing.
- 755. Evidence.
- 756. Confrontation and cross-examination of witnesses.
- 757. Determination and disposition; interim placement.
- 758. Review.

5. EXTRACURRICULAR ACTIVITIES.

- 760. In general.
- 761. Eligibility in general.
- 762. — In general.
- 763. — Marital status; pregnancy.
- 764. Student organizations and government.
- 765. Athletics.
- 766. — In general.
- 767. — Eligibility.
- 768. — Discipline; dismissal from team.
- 769. Publications.

6. TRANSPORTATION.

- 770. In general.
- 771. Determination of distance from school.
- 772. Transportation to private schools or beyond district.
- 773. Transportation for extracurricular activities.
- 774. Proceedings to compel transportation.

7. GRADUATION AND DIPLOMA.

- 780. In general.
- 781. Academic requisites in general.

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II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

782. Grades and credits.

783. Competency testing.

784. Ceremony.

8. INJURIES TO PUPILS OR STUDENTS.

790. In general.

791. Torts in general.

792. — In general.

793. — Duty and standard of care.

794. — Liability as insurer of safety; strict liability.

795. — Duty to supervise students.

796. — Liability for acts of employees, and respondeat superior.

797. — Negligent hiring, supervision, retention, or training.

798. — Immunity in general.

799. — Governmental or proprietary functions.

800. Particular injuries.

801. — In general.

802. — Field trips and other off-premises injuries in general.

803. — Educational malpractice.

804. — Premises liability.

(1). In general.

(2). Outside grounds in general.

(3). Buildings in general.

(4). Doors, entrances, and panels.

(5). Slips and falls in general.

(6). Steps, stairs, and ramps.

(7). Tools and equipment.

805. — Sports, athletics, and recreation.

(1). In general.

(2). Play and recess in general.

(3). Playgrounds, gymnasiums, and physical education.

(4). Football.

(5). Baseball and softball.

(6). Basketball.

(7). Swimming and water sports.

(8). Cheerleading.

(9). Other particular sports.

806. — Intentional torts in general.

807. — Use of force against or restraint of students; corporal punishment.

808. — Duty to protect against intentional injuries.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

(1). In general.

(2). Self-inflicted injuries; suicide.

(3). Injuries by other students.

809. — Sexual abuse, harassment, or misconduct.

(1). In general.

(2). By teachers or other employees.

(3). By other students.

810. — Other particular injuries to students.

811. Actions.

812. — In general.

813. — Conditions precedent.

814. — Jurisdiction and venue.

815. — Time to sue and limitations.

816. — Parties.

817. — Process and appearance.

818. — Pleading.

819. — Evidence.

820. — Trial.

821. — Judgment.

822. — Execution and enforcement of judgment.

823. — Costs and fees.

(F) RACIAL SEGREGATION AND DESEGREGATION.

830. In general.

831. Existence and propriety of segregated system.

832. Equality within segregated system.

833. Desegregation and integration and duty to desegregate in general.

834. De facto or de jure segregation.

835. Desegregation plans in general.

836. Role of courts.

837. Role of federal or statewide agencies and local committees.

838. Time for desegregation.

839. Justification for delay or failure.

840. Step-by-step desegregation; transitional period.

841. School location; districts and attendance zones.

842. School pairing or clustering.

843. Freedom of choice; transfer.

844. Disregard of district boundaries.

845. Transportation for racial integration; busing.

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II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 846. Private schools; abandonment or non-support of public system.
- 847. Particular schools; related facilities and activities.
- 848. Actions.
- 849. — In general.
- 850. — Evidence.
- 851. — Judgment and relief in general.
- 852. — Retained jurisdiction; unitary status.
- 853. — Costs and attorney fees.
- 854. — Review.

(G) CHILDREN WITH DISABILITIES; SPECIAL EDUCATION.

- 860. In general.
- 861. Constitutional and statutory provisions.
- 862. Individualized education program.
- 863. Free appropriate public education.
- 864. "Child find" obligation.
- 865. Stay-put during pendency of review.
- 866. Extended school year services.
- 867. Related services.
- 868. Eligibility; nature of impairment or condition.
- 869. — In general.
- 870. — Behavioral or emotional disorders.
- 871. — Autism.
- 872. — Genetic disorders.
- 873. — Learning disabilities.
- 874. — Other impairments or conditions.
- 875. Assignment or admission to particular schools or programs.
- 876. — In general.
- 877. — Mainstreaming in general.
- 878. — Least restrictive environment.
- 879. — Separate public school.
- 880. — Home care and residential placement.
- 881. — Day school.
- 882. — Private school and out-of-state placement.
- 883. — Tuition reimbursement.
- 884. Administrative proceedings to enforce rights.
- 885. — In general.
- 886. — Settlement agreements; alternative dispute resolution.

II. PUBLIC PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 887. — Proceedings before hearing officer.
- 888. — Administrative review.
- 889. Judicial review or intervention.
- 890. — In general.
- 891. — Parties; standing.
- 892. — Time for proceedings.
- 893. — Exhaustion of remedies.
- 894. — Scope of review.
- 895. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 896. — Determination and disposition.
 - (1). In general.
 - (2). Summary judgment.
- 897. — Further appellate review.
- 898. — Relief.
 - (1). In general; no right to damages.
 - (2). Compensatory education.
 - (3). Injunctions in general.
 - (4). Preliminary injunctions.
 - (5). Costs and attorney fees.
 - (6). — In general.
 - (7). — Prevailing party.
 - (8). — Grounds.
 - (9). — Amount and computation.
 - (10). — Proceedings.
- 899. Transportation.
- 900. Control and discipline.
- 901. Expulsion or suspension; interim placement.

III. PRIVATE PRIMARY AND SECONDARY SCHOOLS.

- 910. In general.
- 911. Constitutional and statutory provisions.
- 912. — In general.
- 913. — Purpose and construction in general.
- 914. — Validity of statutes.
- 915. — Retroactive operation.
- 916. Establishment and status in general.
- 917. Incorporation and organization.
- 918. Regulation and supervision.
- 919. — In general.
- 920. — Accreditation; licensing.

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III. PRIVATE PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 921. — Sectarian institutions.
- 922. Governing boards.
- 923. Officers and employees.
- 924. Property.
- 925. Contracts.
- 926. — In general.
- 927. — Construction and operation.
- 928. — Performance or breach.
- 929. — Contractor's rights and remedies.
- 930. Liabilities.
- 931. — In general.
- 932. — Negligence in general.
- 933. — Immunity in general.
- 934. — Condition of premises.
- 935. — Athletics and physical education.
- 936. — Supervision of other pupils or students.
- 937. — Educational malpractice.
- 938. — Duty to protect against intentional injuries.
 - (1). In general.
 - (2). Hazing.
 - (3). Self-inflicted injuries; suicide.
- 939. — Injuries to persons other than pupils or students.
- 940. Fiscal matters; funds.
- 941. Public aid.
- 942. — In general.
- 943. — Sectarian institutions.
 - (1). In general.
 - (2). Provision of textbooks and services.
 - (3). Voucher programs and tuition assistance.
- 944. Teachers and other instructors.
- 945. — In general.
- 946. — Certificate or license.
- 947. — Compensation.
- 948. — Duties and liabilities.
- 949. — Removal or other adverse action.
- 950. Pupils or students.
- 951. — In general.
- 952. — Admission and attendance.
- 953. — Tuition and fees.
- 954. — Curriculum and activities.
- 955. — Control and discipline.

III. PRIVATE PRIMARY AND SECONDARY SCHOOLS.(Cont'd)

- 956. — Punishment; suspension or expulsion.

IV. INTERSCHOLASTIC ASSOCIATIONS.

- 960. In general.
- 961. Constitutional and statutory provisions.
- 962. Rules and regulations.
- 963. — In general.
- 964. — Construction and enforcement in general.
- 965. — Eligibility for competition.
- 966. — Suspension from competition.
- 967. — Sanctions against school or coaches.
- 968. Judicial intervention.

V. POSTSECONDARY PROPRIETARY SCHOOLS; VOCATIONAL AND OTHER PARTICULARIZED TRAINING.

- 970. In general.
- 971. Constitutional and statutory provisions.
- 972. Driving schools.
- 973. Subject of license.
- 974. Exemptions.
- 975. Regulations in general.
- 976. License fees and taxes.
- 977. Revocation or suspension.
- 978. Rights and remedies of unlicensed persons and of persons dealing with them.
- 979. Penalties and fines.
- 980. Regulation of recruitment.
- 981. Educational malpractice.

VI. COLLEGES AND UNIVERSITIES.

(A) ESTABLISHMENT AND REGULATION IN GENERAL.

- 990. Nature and status in general.
- 991. Constitutional and statutory provisions.
- 992. Incorporation, organization, and location.
- 993. College districts.
- 994. Accreditation; accrediting organizations.
- 995. Dissolution or abandonment.
- 996. Regulation of institution in general.
- 997. — In general.
- 998. — Regulation as condition of public funding.

141E. EDUCATION

VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- 999. — Corporate powers.
- 1000. Judicial supervision in general.

(B) GOVERNANCE AND BOARDS.

- 1010. In general.
- 1011. Constitutional and statutory provisions.
- 1012. Governing boards.
- 1013. — In general.
- 1014. — Appointment, qualification, and tenure.
- 1015. — Powers, duties, and liabilities.
- 1016. — Meetings.
- 1017. — Compensation.

(C) PROPERTY.

- 1020. In general.
- 1021. Constitutional and statutory provisions.
- 1022. Right to acquire, hold, and convey property.
- 1023. Title to property.
- 1024. Control of property in general.
- 1025. Regulation of campus; conduct of visitors.
- 1026. Sale or disposition of property.

(D) CONTRACTS.

- 1030. In general.
- 1031. Constitutional and statutory provisions.
- 1032. Capacity to contract in general.
- 1033. Powers of officers to contract; financial interest.
- 1034. Bidding and bid protests.
- 1035. Contractor bonds.
- 1036. Unauthorized or illegal contracts.
- 1037. Implied contracts.
- 1038. Construction and operation.
- 1039. Modification and rescission.
- 1040. Performance or breach.
- 1041. Rights and remedies of contractors.
- 1042. Rights and remedies of third parties.
- 1043. Rights and remedies of institution.

(E) LIABILITIES.

- 1051. In general.
- 1052. Constitutional and statutory provisions.
- 1053. Liabilities specially imposed by statute.
- 1054. Torts and immunity.
- 1055. — In general.

VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- 1056. — Governmental and proprietary functions in general.
- 1057. — Particular injuries to persons other than students or teachers.
 - (1). In general.
 - (2). Non-faculty employees.
 - (3). Parent and visitors.

(F) FISCAL MATTERS.

- 1060. In general.
- 1061. Constitutional and statutory provisions.
- 1062. — In general.
- 1063. — Purpose and construction in general.
- 1064. — Validity of statutes.
- 1065. Funds in general.
- 1066. Endowment; donations.
- 1067. Public aid.
- 1068. — In general.
- 1069. — Support of private institutions, in general.
- 1070. — Sectarian institutions.
- 1071. Administration of finances.
- 1072. Power to incur indebtedness; bonds.
- 1073. Taxes.

(G) CLAIMS.

- 1080. In general.
- 1081. Constitutional and statutory provisions.
- 1082. Notice, demand, or presentation of claim.
- 1083. — In general.
- 1084. — Service or presentation; timeliness.
- 1085. — Excuses for, and relief from, delay or failure.
- 1086. — Form and sufficiency.
- 1087. — Waiver and estoppel.

(H) ACTIONS.

- 1090. In general.
- 1091. Capacity to sue or be sued.
- 1092. Rights of action and defenses.
- 1093. Time to sue and limitations.
- 1094. Parties.
- 1095. Process and appearance.
- 1096. Pleading.
- 1097. Evidence.

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VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- 1098. Trial.
- 1099. Judgment.
- 1100. Execution and enforcement of judgment.
- 1101. Costs.
- (I) OFFICERS AND EMPLOYEES.**
- 1110. Officers.
- 1111. — In general.
- 1112. — Appointment, qualification, and tenure.
- 1113. — Powers, duties, and liabilities.
- 1114. — Compensation in general.
- 1115. — Pensions and benefits.
- 1116. Employees.
- 1117. — In general.
- 1118. — Duties and liabilities.
 - (1). In general.
 - (2). Criminal responsibility.
- 1119. — Employment in general.
- 1120. — Graduate student employment or internship.
- 1121. — Eligibility and qualifications.
- 1122. — Compensation.
 - (1). In general.
 - (2). Pensions and benefits.
- 1123. — Duration of employment and removal or other discipline.
 - (1). In general.
 - (2). Grounds in general.
 - (3). Retaliation; whistleblowing.
 - (4). Proceedings in general.
 - (5). Notice and hearing.
 - (6). Judicial review.

(J) FACULTY AND EDUCATION PROFESSIONALS.

- 1130. In general.
- 1131. Constitutional and statutory provisions.
- 1132. — In general.
- 1133. — Purpose and construction in general.
- 1134. — Validity of statutes.
- 1135. — Preemption.
- 1136. Employment in general.
- 1137. Eligibility and qualifications.
- 1138. Duties and liabilities.
- 1139. — In general.
- 1140. — Criminal responsibility.

VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- 1141. Compensation.
- 1142. — In general.
- 1143. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). Insurance and death benefits.
 - (4). Service credit.
 - (5). Proceedings and review.
- 1144. Duration of employment and removal or other discipline.
- 1145. — In general.
- 1146. — Tenure.
 - (1). In general; eligibility.
 - (2). Revocation.
 - (3). Proceedings and review.
- 1147. — Grounds.
 - (1). In general.
 - (2). Mandatory retirement.
 - (3). Exercise of rights; retaliation.
 - (4). Reporting or opposing wrongdoing; whistleblowing.
 - (5). Law school faculty.
 - (6). Medical school faculty.
- 1148. — Proceedings.
 - (1). In general.
 - (2). Statement of reasons.
 - (3). Notice and hearing.
 - (4). Administrative review.
- 1149. — Judicial review.
 - (1). In general.
 - (2). Exhaustion of remedies.
 - (3). Evidence.
 - (4). Relief in general.
 - (5). Reinstatement and back pay.
- 1150. Injuries to and liability therefor.
- 1151. — In general.
- 1152. — Duty and standard of care in general.
- 1153. — Premises liability.
- 1154. — Injuries caused by students.
- 1155. — Other particular injuries.
- 1156. — Actions.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Jurisdiction and venue.
 - (4). Time to sue and limitations.
 - (5). Parties.
 - (6). Process and appearance.

141E. EDUCATION

VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- (7). Pleading.
- (8). Evidence.
- (9). Trial.
- (10). Judgment.
- (11). Execution and enforcement of judgment.
- (12). Costs and fees.

(K) STUDENTS.

- 1160. In general.
- 1161. Constitutional and statutory provisions.
- 1162. — In general.
- 1163. — Purpose and construction in general.
- 1164. — Validity of statutes.
- 1165. — Preemption.
- 1166. Contractual nature of relationship with institution.
- 1167. Admission or matriculation.
- 1168. — In general.
- 1169. — Transfers.
- 1170. Tuition and fees.
- 1171. — In general.
- 1172. — Tuition waiver or exemption.
- 1173. — Refund.
- 1174. — Residence determination.
 - (1). In general.
 - (2). Law or medical school.
 - (3). Proceedings and review.
- 1175. Health regulations.
- 1176. Curriculum, degrees, grades, and credits.
- 1177. — In general.
- 1178. — Grades and review thereof.
- 1179. — Distance learning.
- 1180. — Religious instruction.
- 1181. — Graduate students.
- 1182. — Graduation and diploma.
- 1183. — Rescission or revocation of degree.
- 1184. — Transcripts and recommendations.
- 1185. Academic expulsion, suspension, or probation.
- 1186. — In general.
- 1187. — Grounds in general.
- 1188. — Plagiarism or honor code violations.

VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- 1189. — Graduate students.
- 1190. — Proceedings and review.
- 1191. — Readmission or reinstatement.
- 1192. Extracurricular activities.
- 1193. — In general.
- 1194. — Athletics.
- 1195. — Student organizations and government.
- 1196. — Publications.
- 1197. — Fraternities and sororities.
- 1198. — Hazing; civil liability.
- 1199. Regulation of conduct in general.
- 1200. — In general.
- 1201. — Speech and assembly; demonstrations.
- 1202. — Dormitories or other accommodations.
- 1203. — Expulsion, suspension, or other discipline.
 - (1). In general.
 - (2). Grounds.
 - (3). Proceedings and review.
 - (4). Reinstatement.
- 1204. — Violation of rules and offenses.
 - (1). In general.
 - (2). Hazing offense.
- 1205. Injuries to and liability therefor.
- 1206. — In general.
- 1207. — Immunity in general.
- 1208. — Athletics and physical education.
- 1209. — Educational malpractice.
- 1210. — Condition of premises.
 - (1). In general.
 - (2). Buildings and grounds.
 - (3). Dormitories.
- 1211. — Supervision of other students.
- 1212. — Transportation of students.
- 1213. — Duty to protect against intentional injuries.
 - (1). In general.
 - (2). Hazing.
 - (3). Self-inflicted injuries; suicide.
- 1214. — Actions.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Jurisdiction and venue.
 - (4). Time to sue and limitations.
 - (5). Parties.

141E. EDUCATION

VI. COLLEGES AND UNIVERSITIES.(Cont'd)

- (6). Process and appearance.
- (7). Pleading.
- (8). Evidence.
- (9). Trial.
- (10). Judgment.
- (11). Execution and enforcement of judgment.
- (12). Costs and fees.

(L) INTERCOLLEGIATE ASSOCIATIONS.

- 1220. In general.
- 1221. Constitutional and statutory provisions.
- 1222. Rules and regulations.
- 1223. — In general.
- 1224. — Construction, enforcement, and sanctions.
- 1225. Judicial intervention.

VII. STUDENT FINANCIAL AID.

- 1230. In general.
- 1231. Constitutional and statutory provisions.
- 1232. Aid to indigent children.
- 1233. Scholarships.
- 1234. — In general.
- 1235. — Athletic scholarships.
- 1236. — Graduate student fellowship.
- 1237. — Tuition assistance for professionals in training.
- 1238. Loans.
- 1239. — In general.
- 1240. — Federally guaranteed loans.
- 1241. — Loan insurance.
- 1242. — Collection of loan debt in general.
- 1243. — Discharge or forbearance of obligation.

142. EJECTMENT

SUBJECTS INCLUDED

Actions for recovery of specific real property, founded on right of possession and right to damages for being deprived thereof, whether proceeding according to common-law or

statutory forms, or by possessory action under the civil law

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto, by and against whom and as to what property they may be maintained

Procedure therein, including incidental recovery, in the same action or in a separate proceeding, for use and occupation, profits, damages, improvements, etc.

Verdict and judgment and enforcement thereof by writ of possession or otherwise

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adverse possession and statutes of limitation, effect of, see ADVERSE POSSESSION, LIMITATION OF ACTIONS

Disputed title, recovery of possession in special form of action founded on right to damages for trespass, see TRESPASS TO TRY TITLE

Forcible entry, unlawful detainer, etc., actions founded on, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

New trial as of right in actions of ejectment, etc., see NEW TRIAL

Particular kinds of property, or particular classes of estates or interests, recovery of possession, see MINES AND MINERALS, TENANCY IN COMMON, LANDLORD AND TENANT, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Real actions in general—

Right of possession, actions founded on, see ENTRY, WRIT OF

Right of property, actions founded on, see REAL ACTIONS

Trespass, actions for damages, see TRESPASS

I. RIGHT OF ACTION AND DEFENSES, ¶1-35.

II. JURISDICTION, PARTIES, PROCESS, AND INCIDENTAL PROCEEDINGS, ¶36-61.

III. PLEADING AND EVIDENCE, ¶62-96.

IV. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT, AND REVIEW, ¶97-123.

142. EJECTMENT

V. DAMAGES, MESNE PROFITS, IMPROVEMENTS, AND TAXES, ⌚124-153.

VI. EQUITABLE EJECTMENT, ⌚154-167.

I. RIGHT OF ACTION AND DEFENSES.

1. Nature and scope of remedy in general.
2. Statutory provisions and remedies.
3. Possessory or petitory action.
4. Form of action.
5. Existence of other remedy.
6. Property which may be subject of action.
7. Grounds of action in general.
8. Title to support action.
9. — In general.
 - (1). In general.
 - (2). Necessity for title or interest by plaintiff.
 - (3). Sufficiency of title in general.
 - (4). Sufficiency of title as against intruder.
 - (5). Easements or licenses.
 - (6). Fee subject to easement.
 - (7). Title acquired after action brought or demise alleged.
 - (8). Interest in undivided tract.
10. — Adverse possession.
11. — Interest in public lands.
12. — Paper title.
13. — Equitable title.
14. — Title by estoppel.
15. — Title from common source.
 - (1). In general.
 - (2). Superiority of title.
 - (3). Admission as to common source.
 - (4). Affidavit of title from common source.
16. Prior possession of plaintiff.
17. Right of plaintiff to possession.
18. Ouster or disseisin, or other acts of defendant.
19. Possession of defendant.
20. Claim of title to or acts of ownership of unoccupied lands.
21. Demand or notice to quit, or other conditions precedent.
22. Defenses.
23. — In general.
24. — Adverse possession.

I. RIGHT OF ACTION AND DEFENSES.(Cont'd)

25. — Title or right of possession of third person.
 - (1). In general.
 - (2). Right to show outstanding title.
 - (3). What constitutes outstanding title in general.
 - (4). Validity of outstanding title.
 - (5). Title from common source.
 - (6). Conveyance or incumbrance.
 - (7). Equitable title in third person.
26. — Equitable defenses in general.
 - (1). In general.
 - (2). What constitutes equitable defense in general.
 - (3). Fraud or invalidity of plaintiff's title.
 - (4). Liens in general.
 - (5). Contract for purchase.
27. — Equitable estoppel.
28. — Set-off and counterclaim.
29. Pendency of other action or proceeding.
30. Abatement on death of party.
31. Successive actions.
32. Cross-actions.
33. Persons entitled to sue.
34. Compelling bringing of action.
35. Persons against whom action may be brought.

II. JURISDICTION, PARTIES, PROCESS, AND INCIDENTAL PROCEEDINGS.

36. Jurisdiction of subject-matter.
37. Jurisdiction of the person.
38. Venue.
39. Time to sue and laches.
See also LIMITATION OF ACTIONS.
40. Parties plaintiff.
41. — In general.
42. — Lessor of plaintiff.
43. — Joinder.
44. Parties defendant.
45. — In general.
46. — Casual ejector or tenant in possession.
47. — Joinder.
48. Notice to tenant and entry of consent rule.
49. Notice to landlord and leave to defend.

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II. JURISDICTION, PARTIES, PROCESS, AND INCIDENTAL PROCEEDINGS.(Cont'd)

- 50. Intervention and bringing in new parties.
- 51. Substitution of parties.
- 52. Process.
- 53. Declaration and notice as process.
- 54. Appearance.
- 55. Defense bonds.
- 56. Estrepement.
- 57. Injunction.
- 58. Surveys.
- 59. — In general.
- 60. — Amendment or resurvey.
- 61. Notice of pendency of action.

III. PLEADING AND EVIDENCE.

- 62. Declaration, complaint, or petition.
 - 62.1. — In general.
- 63. — Form and requisites in general.
- 64. — Description of property.
- 65. — Title, estate, and possession of plaintiff.
- 66. — Ouster by and possession of defendant.
- 67. — Demand and notice.
- 68. Plea, answer, and disclaimer.
 - 68.1. — In general.
- 69. — Form and requisites in general.
- 70. — Matter in abatement.
- 71. — Disclaimer.
- 72. — Set-off and counterclaim.
- 73. Cross-complaint and answer thereto.
- 74. Replication or reply.
- 75. Demurrer.
- 76. Amended and supplemental pleadings.
- 77. Affidavits accompanying pleadings.
- 78. Delivery or filing of abstract or evidence of title.
- 79. Motions for judgment on pleadings.
- 80. Issues, proof, and variance.
 - 80.1. — In general.
- 81. — Issues in general.
- 82. — Necessity of proof of title pleaded.
- 83. — Necessity of proof of title of all coplaintiffs.
- 84. — Evidence admissible under pleadings.
 - (1). In general.
 - (2). Title in general.

III. PLEADING AND EVIDENCE.(Cont'd)

- (3). Possession or right of possession.
- (4). Identity or description of property.
- (5). Equitable defenses.
- 85. — Variance between allegations and proof.
- 86. Presumptions and burden of proof.
 - (1). In general.
 - (2). Identity of land.
 - (3). Title.
 - (4). Possession or right to possession.
- 87. Admissibility of evidence.
- 88. — In general.
- 89. — Identity and description of property.
- 90. — Title and right to possession.
 - (1). In general.
 - (2). Grant, conveyance, or deed.
 - (3). Public lands.
 - (4). Sale or purchase under execution.
 - (5). Mortgage.
 - (6). Fraudulent conveyances.
- 91. — Possession and ouster.
- 92. Weight and sufficiency of evidence.
- 93. — In general.
- 94. — Identity and description of property.
- 95. — Title and right to possession.
 - (1). In general.
 - (2). Grant, conveyance, or deed.
 - (3). Descent or devise.
 - (4). Identity of parties in chain of title.
- 96. — Possession and ouster.

IV. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT, AND REVIEW.

- 97. Dismissal or nonsuit before trial.
 - 97.1. — In general.
- 98. — Voluntary dismissal in general.
- 99. — Dismissal as to one or more codefendants.
- 100. — Involuntary.
- 101. Scope of inquiry and powers of court.
- 102. — In general.
- 103. — On default of defendant.
- 104. Proceedings preliminary to trial.
- 106. Questions for jury in general.
- 107. Submission of issues.
- 108. Dismissal or nonsuit at trial.
- 109. Direction of verdict.

142. EJECTMENT

IV. TRIAL, JUDGMENT, ENFORCEMENT OF JUDGMENT, AND REVIEW. (Cont'd)

- 110. Instructions.
- 111. Verdict and findings.
 - (5). In general.
 - (1). Requisites and sufficiency in general.
 - (2). Excessive verdict.
 - (3). Designation or description of property.
 - (4). Designation of title, estate, or interest.
 - (5). Right of possession of plaintiff.
 - (6). Ouster by and possession of defendant.
 - (7). Joint or several verdict.
 - (8). Conditional verdict.
 - (9). Responsiveness to issues.
 - (10). Amendment or correction.
 - (11). Construction and operation.
- 112. New trial on ground of error or irregularity.
- 113. Judgment.
- 113.1. — In general.
- 114. — Form and requisites in general.
- 115. — Partial recovery.
- 116. — For defendant.
- 117. — Operation and effect.
- 118. Execution and enforcement of judgment.
- 119. — In general.
 - (1). In general.
 - (2). Injunction and stay.
- 120. — Writ of possession.
 - (5). In general.
 - (1). Right to writ in general.
 - (1.5). Form and requisites.
 - (2). Persons subject to ouster.
 - (3). Alias and pluries writs.
 - (4). Time of issuance.
 - (5). Execution and return.
 - (6). Vacating or quashing writ.
- 121. Appeal and error.
- 122. Restitution.
- 123. Costs.

V. DAMAGES, MESNE PROFITS, IMPROVEMENTS, AND TAXES.

- 124. Nature and form of remedy for damages in general.

V. DAMAGES, MESNE PROFITS, IMPROVEMENTS, AND TAXES. (Cont'd)

- 125. Statutory provisions as to recovery of damages or mesne profits.
- 126. Nominal damages in action of ejectment.
- 127. Recovery of actual damages or mesne profits in action of ejectment.
- 128. Actions for mesne profits.
- 129. Damages for waste or other injury.
- 130. Interest as element of damages.
- 131. Exemplary damages.
- 132. Measure of damages or profits.
- 133. Injunction or receiver as to rents and profits.
- 134. Allegations and prayers in pleadings as to damages or mesne profits.
- 135. Evidence as to damages, rents, or profits.
- 136. Assessment of damages or mesne profits.
- 137. Verdict and findings as to damages or mesne profits.
- 138. Judgment for damages or mesne profits and enforcement thereof.
- 139. Rights of parties as to improvements in general.
- 140. Statutory provisions as to improvements or taxes.
- 141. Improvements for which compensation may be claimed.
- 142. Grounds for compensation for improvements or taxes paid.
 - (1). In general.
 - (2). Title and possession to support claim in general.
 - (3). Color of title and adverse possession.
 - (4). Bona fides of occupation or claim.
- 143. Set-off of improvements or taxes against damages or mesne profits.
- 144. Charge of improvements or taxes on property recovered.
- 145. Measure of compensation for improvements.
- 146. Pleading improvements or payment of taxes.
- 147. Evidence as to improvements or taxes.
- 148. Proceedings for allowance for improvements or taxes.

142. EJECTMENT

V. DAMAGES, MESNE PROFITS, IMPROVEMENTS, AND TAXES.(Cont'd)

- 149. Verdict and findings as to improvements or taxes.
- 150. Provisions of judgment as to improvements or taxes and enforcement thereof.
- 151. Election to take value of land.
- 152. Appeal and error.
- 153. Costs.

VI. EQUITABLE EJECTMENT.

- 154. Nature and scope of remedy.
- 155. Statutory provisions.
- 156. Grounds and defenses.
- 157. Jurisdiction of equity.
- 158. Limitations and laches.
See also LIMITATION OF ACTIONS.
- 159. Parties.
- 160. Process.
- 161. Pleading.
- 162. Evidence.
- 163. Hearing or trial.
- 164. Relief awarded.
- 165. Judgment or decree and enforcement thereof.
- 167. Costs.

142T. ELECTION LAW

SUBJECTS INCLUDED

- Choice by popular vote at general or special elections of public officers
- Election districts, boards, and election officers
- Nature of right of suffrage and regulation of its exercise in general
- Constitutional and statutory provisions relating thereto
- Qualifications and registration of voters
- Political activity by public employees
- Political party organization
- Campaign finance regulation
- Nominations and primaries

Ordering or calling elections, regular or special, and notice thereof

Time, place, and manner of voting, including ballots, ascertaining results, and making returns and canvassing

Effect of irregularities or defects

Effect of illegal acts and practices

Proceedings to contest result

Discrimination and the Voting Rights Act

Elections law offenses and prosecutions

Ballot measures in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Apportionment and reapportionment of particular bodies, see MUNICIPAL CORPORATIONS ⇨80, COUNTIES ⇨38, EDUCATION, STATES ⇨27, and UNITED STATES ⇨216

Corporations and other private associations, election of officers, see CORPORATIONS AND BUSINESS ORGANIZATIONS and other specific topics

Election contests for legislative seats, as determined by legislature itself, see MUNICIPAL CORPORATIONS, STATES, and UNITED STATES

Elections on proposed state constitutional amendment, see CONSTITUTIONAL LAW ⇨540

Electoral college, see UNITED STATES ⇨25

Eligibility to run for public office, see PUBLIC EMPLOYMENT and specific governmental topics

Initiative and referendum for ordinances, see MUNICIPAL CORPORATIONS and COUNTIES

Initiative and referendum for statutes, see STATUTES

Injunctions as to elections, see INJUNCTIONS

Lobbying, see LOBBYING

Officers, election or appointment by legislative or other bodies, boards, etc., see PUBLIC EMPLOYMENT, MUNICIPAL CORPORATIONS, COUNTIES, and other specific topics dealing with particular bodies or officers

Particular questions, determination by popular vote, including bond elections, see IN-

142T. ELECTION LAW

TOXICATING LIQUORS, EDUCATION, and other specific topics
Political rights and discrimination in general, see CONSTITUTIONAL LAW
Presidential Election Campaign Fund Act, see UNITED STATES
Recall of elected officials, see PUBLIC EMPLOYMENT
Regulation of elections to Congress, see UNITED STATES
Regulation of elections to territorial legislature, see TERRITORIES ¶19
Tribal officers, election of, see INDIANS ¶217

- I. IN GENERAL, ¶1-9.
- II. ELECTION DISTRICTS, BOARDS, AND OFFICERS, ¶10-39.
- III. VOTERS, ¶40-139.
 - (A) IN GENERAL; RIGHT OF SUFFRAGE, ¶40-59.
 - (B) QUALIFICATIONS, ¶60-99.
 - (C) REGISTRATION, ¶100-139.
- IV. POLITICAL ACTIVITY AND ASSOCIATIONS, ¶140-169.
 - (A) IN GENERAL, ¶140-159.
 - (B) POLITICAL ORGANIZATIONS; PARTIES, ¶160-169.
- V. CONTRIBUTIONS AND EXPENDITURES; CAMPAIGN FINANCE, ¶170-229.
- VI. NOMINATIONS, ¶230-279.
- VII. CONDUCT OF ELECTION, ¶280-589.
 - (A) IN GENERAL, ¶280.
 - (B) ORDERING OR CALLING ELECTION; NOTICE, ¶281-309.
 - (C) BALLOTS, ¶310-359.
 - (D) TIME, PLACE, AND MANNER OF VOTING, ¶360-419.
 - (E) DETERMINATION AND DECLARATION OF RESULT, ¶420-459.
 - (F) EFFECT OF IRREGULARITIES OR DEFECTS, ¶460-489.
 - (G) EFFECT OF ILLEGAL ACTS AND PRACTICES, ¶490-509.
 - (H) ACTIONS AND PROCEEDINGS; ELECTION CONTESTS, ¶510-589.
- VIII. DISCRIMINATION; VOTING RIGHTS ACT, ¶590-639.
- IX. BALLOT MEASURES; INITIATIVE AND REFERENDUM IN GENERAL, ¶640-679.
- X. OFFENSES AND PROSECUTIONS, ¶680-731.

X. OFFENSES AND PROSECUTIONS
—Cont'd

- (A) IN GENERAL, ¶680-709.
- (B) PROSECUTIONS, ¶710-731.

I. IN GENERAL.

- 1. In general.
- 2. What is an “election”.
- 3. Public policy in general.
- 4. Purpose of elections.
- 5. Penalties and actions therefor.

II. ELECTION DISTRICTS, BOARDS, AND OFFICERS.

- 10. In general.
- 11. Nature and status of districts or precincts.
- 12. Constitutional and statutory provisions.
- 13. — In general; power to regulate election officers and boards.
- 14. — Purpose and construction in general.
- 15. — Retroactive operation.
- 16. Creation and alteration of districts or precincts.
- 17. Reapportionment in general.
- 18. Creation and abolition of boards of elections.
- 19. Creation and abolition of offices.
- 20. Appointment and tenure of officers.
- 21. — In general.
- 22. — Eligibility.
- 23. — Qualification; oath.
- 24. — Representation of political parties.
- 25. — Removal and discipline.
- 26. Compensation of officers.
- 27. Powers and proceedings of board of elections.
- 28. Powers and duties of officers in general.
- 29. Defects in appointment, ineligibility, or disqualification of officers.
- 30. Irregularities or misconduct of officers.
- 31. Liabilities of officers.
- 32. Actions against officers.

III. VOTERS.

(A) IN GENERAL; RIGHT OF SUFFRAGE.

- 40. In general.
- 41. Nature and source of right.
- 42. Right to vote effectively.

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III. VOTERS.(Cont'd)

43. Relationship of right to vote and right to hold office.
44. Power to confer and regulate.
45. — In general.
46. — Congress.
47. — State legislatures.
48. — Local government.
49. — Territorial legislatures.
50. Statutory provisions conferring or defining right.
51. — In general.
52. — Constitutionality and validity.
53. — Construction and operation.
 - (1). In general.
 - (2). Liberal or strict construction.
54. Power to restrict or extend suffrage.
55. — In general.
56. — Limitation as to number of candidates or propositions to be voted for.
57. — Cumulative voting.

(B) QUALIFICATIONS.

60. In general.
61. Constitutional and statutory provisions.
62. — In general; power to regulate qualifications.
63. — Purpose and construction in general.
64. — Retroactive operation.
65. Primary election voters.
66. — In general.
67. — Closed or open primary.
68. Age.
69. Mental competency.
70. Citizenship.
71. — In general.
72. — Aliens having made declaration of intention to become citizens.
73. — Resident aliens.
74. Residence.
75. — In general.
76. — Sufficiency in general.
77. — Duration of residency.
78. — Change in general.
79. — Employment in public service.
80. — Employment in navigation.
81. — Students.
82. — Inmates of public institutions.

III. VOTERS.(Cont'd)

83. — Places under jurisdiction of United States.
84. Property.
85. — In general.
86. — General elections.
87. — Special or local elections.
88. — Transfers for purpose of qualification.
89. Payment of taxes.
90. Education; literacy.
91. Religious belief.
92. Disqualification.
93. Forfeiture of citizenship and disfranchisement.
94. — In general.
95. — Deprivation of citizenship.
96. — Conviction of crime.
97. — Bribery.
98. — Betting on election.
99. — Restoration to citizenship.

(C) REGISTRATION.

100. In general.
101. Constitutional and statutory provisions.
102. — In general; power to regulate registration.
103. — Purpose and construction in general.
104. — Retroactive operation.
105. State authority.
106. Elections subject to registration laws.
107. Nature and necessity of registration.
108. Registration officers.
109. — In general.
110. — Appointment, qualification and tenure in general.
111. — Representation of political parties.
112. — Compensation.
113. — Powers and functions in general.
114. — Liabilities.
115. Time for registration.
116. Place for registration; registration agencies.
117. Proceedings for registration.
118. — In general.
119. — Registration for federal elections.
120. — Regulation of third-party registration.

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III. VOTERS.(Cont'd)

- 121. — Concurrent registration.
- 122. — Proof of identity and eligibility.
- 123. — Absentee registration.
- 124. Compelling registration.
- 125. Correction of lists.
- 126. Challenges to voters on list.
- 127. Filing or posting lists.
- 128. Custody and disposition of registration lists or books.
- 129. Inspection or copy of lists.
- 130. Review by courts of proceedings of registration officers.
- 131. Conclusiveness and effect in general.
- 132. Effect of irregularities or defects.
- 133. — In general.
- 134. — Right to vote.
- 135. — Validity of votes or of election.
- 136. Fraudulent or false registration.
- 137. Right to vote of persons not registered.
- 138. Transfer of registration.

IV. POLITICAL ACTIVITY AND ASSOCIATIONS.

(A) IN GENERAL.

- 140. In general.
- 141. Constitutional and statutory provisions.
- 142. — In general.
- 143. — Purpose and construction in general.
- 144. — Retroactive operation.
- 145. Political activity by public employees.
- 146. — In general; eligibility for office.
- 147. — Covered employees.
- 148. — Partisan or nonpartisan office.
- 149. — Removal or discipline of employees.
 - (1). In general.
 - (2). Proceedings and review.

(B) POLITICAL ORGANIZATIONS; PARTIES.

- 160. In general.
- 161. Constitutional and statutory provisions.
- 162. Recognized party status.
- 163. Membership.
- 164. Appointment or election and removal of officers.
- 165. Rights and powers of parties and party committees.

IV. POLITICAL ACTIVITY AND ASSOCIATIONS.(Cont'd)

- 166. Judicial supervision in general.
- 167. Actions by or against parties or party committees.

V. CONTRIBUTIONS AND EXPENDITURES; CAMPAIGN FINANCE.

- 170. In general.
- 171. Constitutional and statutory provisions.
- 172. — In general; power to regulate campaign finance.
- 173. — Purpose and construction in general.
- 174. — Retroactive operation.
- 175. Ordinances and charters.
- 176. Public financing; matching funds.
- 176.5. Presidential campaign funding.
- 177. Contributions in general.
- 178. Regulation of particular donors.
- 179. — In general.
- 180. — Corporations.
- 181. — Labor organizations.
- 182. — Public employees.
- 183. — Foreign nationals.
- 184. — Party contributions during primary.
- 185. Solicitation of contributions.
- 186. Limitations on amount of contributions.
- 187. Use of contributions and funds.
- 188. Expenditures in general.
- 189. Limitations on amount of expenditures.
- 190. Campaign literature, publicity, or advertising.
- 191. — In general.
- 192. — Illegal publicity or advertising.
- 193. — Fair campaign practices; false statements.
- 194. — Candidate debates.
- 195. — Independent communications; express advocacy.
- 196. — Anonymous communications.
- 197. — Misrepresentation of campaign authority.
- 198. Disclosure and reporting requirements.
- 199. — In general.
- 200. — Candidate's campaign committee.
- 201. — Self-financing candidate.
- 202. — Disclosure of independent expenditures.
 - (1). In general.

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V. CONTRIBUTIONS AND EXPENDITURES; CAMPAIGN FINANCE.(Cont'd)

- (2). Political action committees or issue committees.
- (3). Coordinated expenditures.
- (4). Membership organization.
- 203. — Anonymous contributions.
- 204. Administrative agencies and proceedings.
- 205. — In general; rulemaking.
- 206. — Complaint; notice of violation.
- 207. — Advisory opinions.
- 208. — Subpoenas.
- 209. — Hearing; evidence.
- 210. — Conciliation agreement.
- 211. — Penalties and fines.
- 212. — Recoupment of matching funds.
- 213. — Disqualification of candidate.
- 214. Judicial review and enforcement.
- 215. — In general.
- 216. — Appealability; finality of decision.
- 217. — Petition for audit of accounts.
- 218. — Exhaustion of administrative remedies.
- 219. — Time for proceedings.
- 220. — Parties; standing.
- 221. — Scope of review.
- 222. — Evidence.
- 223. — Determination and disposition.
- 224. — Forfeiture of office.
- 225. — Civil liability; private right of action.
- 226. Costs and fees.
- 227. — In general.
- 228. — Prevailing party.
- 229. — Amount of award.

VI. NOMINATIONS.

- 230. In general.
- 231. Constitutional and statutory provisions.
- 232. — In general.
 - (1). In general.
 - (2). Power to regulate.
 - (3). Construction and operation.
- 233. — Ballot access.
 - (1). In general.
 - (2). Power to regulate.
 - (3). Construction and operation.

VI. NOMINATIONS.(Cont'd)

- 234. Nominations by political parties in general.
- 235. — In general.
- 236. — Authority to make.
- 237. — Multiple nominations.
- 238. — Party divisions and conflicting nominations.
- 239. Nomination by party caucus, primary meeting, or mass convention.
- 240. Nomination by primary election.
- 241. — In general.
- 242. — Declaration of candidacy; qualification as candidate.
- 243. — Necessity of primary.
- 244. — Effect of defeat in primary.
- 245. Nomination by convention or other representatives of party.
- 246. — In general.
- 247. — Authority to make.
- 248. — Calling convention or meeting.
- 249. — Election and qualification of delegates.
- 250. — Meeting and organization.
- 251. — Proceedings and nomination.
- 252. — Delegation of power to committee.
- 253. — Nomination by committee.
- 254. Certificate of nomination by party.
- 255. — In general.
- 256. — Necessity.
- 257. — Making, form, and requisites.
- 258. — Amendment and cure of defects.
- 259. — Filing.
- 260. Nomination by electors.
- 261. — In general.
- 262. — Authority to make; candidate qualifications.
- 263. — Number and qualifications of electors.
- 264. Petition, certificate, or nomination papers.
- 265. — In general; designating petition.
- 266. — Requisites and sufficiency.
- 267. — Qualification of circulators.
- 268. — Filing certificate or nomination papers.
- 269. — Filing fee.
- 270. Acceptance, declination, or withdrawal.

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VI. NOMINATIONS.(Cont'd)

- 271. Nominations to fill vacancy among nominees.
- 272. Amendment of certificates or nomination papers.
- 273. Certification of nomination by public officers.
- 274. Publication of list of nominees.
- 275. Effect of irregularities or defects.
- 276. Votes for persons not nominated.

VII. CONDUCT OF ELECTION.

(A) IN GENERAL.

- 280. In general.

(B) ORDERING OR CALLING ELECTION; NOTICE.

- 281. In general.
- 282. Authority and exercise thereof in general.
- 283. Constitutional and statutory provisions.
- 284. — In general; power to regulate calling of election.
- 285. — Purpose and construction in general.
- 286. — Retroactive operation.
- 287. Authority to hold general or regular election.
- 288. Authority to call special election.
- 289. Petition to call special election.
- 290. Proceedings on petition.
- 291. Order or call.
- 292. — In general.
- 293. — Primary elections.
- 294. Warrant or writ.
- 295. Place for holding election.
- 296. Time for holding election.
- 297. Notice or proclamation.
- 298. — In general.
- 299. — Necessity.
- 300. — Requisites and sufficiency.
- 301. — Publication and posting.
- 302. Adjournment or new election.
- 303. Review by courts of proceedings ordering or calling election.

(C) BALLOTS.

- 310. In general.
- 311. Constitutional and statutory provisions.

VII. CONDUCT OF ELECTION.(Cont'd)

- 312. — In general; power to regulate ballots.
- 313. — Purpose and construction in general.
- 314. — Retroactive operation.
- 315. Authority and duty to prepare and furnish.
- 316. Form and contents in general.
- 317. Official ballots.
- 318. — In general; necessity.
- 319. — Order and arrangement of tickets and names.
- 320. — Party names, emblems, or devices.
 - (1). In general.
 - (2). Nomination by electors.
 - (3). Two or more tickets under same party designation.
 - (4). Same person candidate of two or more parties.
- 321. — Independent candidates.
- 322. — Blank spaces.
- 323. — Names and designations of offices.
- 324. — Names and designations of candidates.
- 325. — Grouping of offices and candidates.
- 326. — Withdrawal, disability, or death of candidate.
- 327. — Numbering.
- 328. — Indorsement.
- 329. — Objections.
- 330. — Remedies for errors and irregularities.
- 331. Indication of choice by voter.
- 332. — In general.
- 333. — Shape of mark.
- 334. — Instrument or medium used.
- 335. — Position of mark.
- 336. — Punch card ballot.
- 337. — Voting for entire or part of ticket by single mark or designation.
- 338. — Errors in names of candidates.
- 339. — Defacement of names or party groups not voted for.
- 340. Insertion of names; write-in.
- 341. — In general.
- 342. — Sufficiency of designation.
- 343. Pastors.
- 344. Two or more candidates for same office.

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(D) TIME, PLACE, AND MANNER OF VOTING.

- 360. In general.
- 361. Constitutional and statutory provisions.
- 362. — In general.
- 363. — Power to regulate conduct.
 - (1). In general.
 - (2). Place for voting.
 - (3). Time for voting.
 - (4). Mode of voting.
 - (5). Secrecy as to vote.
- 364. — Purpose and construction in general.
- 365. — Retroactive operation.
- 366. Powers and functions of election officers in general.
- 367. Application of requirements to special elections.
- 368. Polling places.
- 369. — In general.
- 370. — Establishment and alteration in general.
- 371. — Number.
- 372. — Location.
- 373. — Residence as affecting place for voting.
- 374. Time for voting.
- 375. — In general.
- 376. — Early voting in person.
- 377. — Opening polls.
- 378. — Adjournment or recess.
- 379. — Closing polls.
- 380. Presence of officers.
- 381. Presence of representatives of candidates or parties.
- 382. Presence of unauthorized persons.
- 383. Registration or poll books or lists.
- 384. Mode of voting in general.
- 385. Voting by ballot.
- 386. — In general.
- 387. — Ballot boxes.
- 388. — Issue of ballots to voters.
- 389. — Preparation of ballots by voters.
- 390. — Assistance to voters.
- 391. — Deposit of ballots in boxes.
- 392. Use of voting machines.
- 393. — In general.
- 394. — Certification in general.
- 395. — Mechanical lever machines.
- 396. — Optical scanners.

VII. CONDUCT OF ELECTION.(Cont'd)

- 397. — Touch screen or direct recording machines.
- 398. Absentee ballots.
- 399. — In general.
- 400. — Grounds for absence.
- 401. — Form and requisites.
- 402. — Application and delivery.
- 403. — Absentee voting from abroad.
- 404. Election conducted solely by mail.
- 405. Challenges to voters and proceedings thereon.
- 406. — In general.
- 407. — Identification of voter.
- 408. — Provisional ballot.
- 409. — Review of absentee ballots.
- 410. Rejection of vote by election officers.
- 411. Withdrawal or change of vote.
- 412. Failure of electors to vote.

(E) DETERMINATION AND DECLARATION OF RESULT.

- 420. In general.
- 421. Constitutional and statutory provisions.
- 422. — In general; power to regulate counting.
- 423. — Purpose and construction in general.
- 424. — Retroactive operation.
- 425. Number of votes necessary to choice.
- 426. Tie votes.
- 427. Count of votes.
- 428. — In general.
- 429. — Votes to be counted.
- 430. — Presence and participation of representatives of parties or candidates.
- 431. — Adjournment.
- 432. — Recount or correction before return or canvass.
- 433. Returns.
- 434. — In general.
- 435. — Form and contents.
- 436. — Attaching ballots and documents.
- 437. — Certificates and signatures.
- 438. — Forwarding and custody.
- 439. — Compelling return.
- 440. — Correction or amendment.
- 441. Preservation or disposition of ballots.
- 442. Canvass of returns.

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VII. CONDUCT OF ELECTION.(Cont'd)

- 443. — In general.
- 444. — Canvassing boards or officers.
- 445. — Powers and proceedings of canvassers as to returns.
- 446. — Recount of votes.
- 447. — Compelling canvass.
- 448. — Recanvass.
- 449. Certificate of election.
- 450. — In general.
- 451. — Form, requisites, and validity.
- 452. — Compelling issue.
- 453. — Conclusiveness, operation, and effect.
- 454. — Conditional or conflicting certificates.

(F) EFFECT OF IRREGULARITIES OR DEFECTS.

- 460. In general.
- 461. Ordering or calling election.
- 462. Polling places.
- 463. Time for voting.
- 464. Presence of officers.
- 465. Presence of unauthorized persons.
- 466. Registration or poll books or lists.
- 467. Ballots.
- 468. — In general.
- 469. — Numbering ballots.
- 470. — Indorsement of ballots.
- 471. — Indication of choice by voter.
- 472. — Name or designation of office.
- 473. — Name or designation of candidate.
- 474. — Mutilation.
- 475. — Absentee or mail-in ballots.
- 476. Mode of voting in general.
- 477. Voting by ballot.
- 478. Preparation of ballots by voters and assistance to voters.
- 479. Counting of votes.
- 480. Returns.
- 481. Canvass of returns.
- 482. Certificate of election.

(G) EFFECT OF ILLEGAL ACTS AND PRACTICES.

- 490. In general.
- 491. Ballots.
- 492. — In general.
- 493. — Variation as to material, dimensions, color, or typography.

VII. CONDUCT OF ELECTION.(Cont'd)

- 494. — Distinguishing marks.
 - (1). In general.
 - (2). Marks resulting from acts or omissions of election officers.
 - (3). Intent.
 - (4). Shape of marks.
 - (5). Instrument or medium used in marking ballot.
 - (6). Cross-marks at improper places on ballot.
 - (7). Double or unusually heavy marks.
 - (8). Insertion of names.
 - (9). Erasure or cancellation of marks or lines.
 - (10). Blots or blurs.
 - (11). Indistinct marks.
 - (12). Similar marks on other ballots.

- 495. — Contents.
- 496. — Voting more than one ballot.
- 497. Illegal votes.
- 498. Bribery.
- 499. Illegal expenditures and corrupt practices.
- 500. Fraud.
- 501. Obstruction of or interference with voters or officers.
- 502. Intimidation and violence.

(H) ACTIONS AND PROCEEDINGS;
ELECTION CONTESTS.

- 510. In general.
- 511. Nature and form of remedy.
- 512. Constitutional and statutory provisions.
- 513. — In general; power to regulate contests.
- 514. — Purpose and construction in general.
- 515. — Retroactive operation.
- 516. Grounds.
- 517. — In general.
- 518. — Primary elections.
- 519. Objections to primary elections.
- 520. — In general.
- 521. — Who may object.
- 522. — Making, form, and requisites of objections.
- 523. — Time for objections.
- 524. — Filing and notice of objections.
- 525. — Determination by party tribunals.

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VII. CONDUCT OF ELECTION.(Cont'd)

- 526. — Determination by public officers.
- 527. Judicial resolution of contest in general.
- 528. Conditions precedent.
- 529. Defenses.
- 530. Persons entitled to bring contest.
- 531. Persons against whom contest may be brought.
- 532. Jurisdiction.
- 533. Review on certiorari.
- 534. Organization and sessions of courts or boards.
- 535. Venue.
- 536. Limitations and laches.
- 537. Parties.
- 538. Process or service of notice.
- 539. Appearance and representation by attorney.
- 540. Abatement on death of party.
- 541. Summary proceedings for review of primary elections.
- 542. Pleading.
- 543. — In general.
- 544. — Complaint, petition, statement, or notice.
 - (1). In general.
 - (2). Sufficiency in general.
 - (3). Eligibility of contestant and contestee.
 - (4). Errors and irregularities.
 - (5). Result of election and effect of irregularities.
 - (6). Verification.
- 545. — Plea, answer, or reply.
- 546. — Amendment.
- 547. — Issues, proof, and variance.
- 548. Evidence.
- 549. — In general.
- 550. — Presumptions and burden of proof in general.
- 551. — Presumptions as to returns or certificates.
- 552. — Admissibility in general.
 - (1). In general.
 - (2). Qualifications of voters.
 - (3). Evidence as to how electors voted; privilege.
 - (4). Showing for whom votes were intended.

VII. CONDUCT OF ELECTION.(Cont'd)

- (5). Admissibility of ballots.
- (6). Illegal acts and practices.
- 553. — Impeaching or contradicting returns or certificates.
- 554. — Weight and sufficiency.
 - (1). In general.
 - (2). Relative weight of ballots and returns or certificates.
- 555. Motions.
- 556. — In general.
- 557. — Demurrer.
- 558. — Dismissal.
- 559. Scope of inquiry and powers of court or board.
- 560. — In general.
 - (1). In general.
 - (2). Objections to certificate of nomination.
 - (3). Deduction or apportionment of illegal ballots.
 - (4). Annulment of election.
- 561. — Inspection of ballots and recount.
 - (1). In general.
 - (2). Power to recount.
 - (3). Grounds for and objections to recount.
 - (4). Proceedings to obtain recount.
 - (5). Proceedings on recount or inspection.
 - (6). Inspection of ballots by contestant.
- 562. Trial or hearing.
- 563. — In general.
- 564. — Questions for jury and instructions.
- 565. New trial or rehearing.
- 566. Judgment.
- 567. — In general.
- 568. — Conclusiveness, operation, and effect.
- 569. Further appellate review.
- 570. — In general.
- 571. — Nature and form of remedy, and appellate jurisdiction.
- 572. — Right of review and decisions reviewable.
- 573. — Preservation of grounds of review.
- 574. — Proceedings for review.
- 575. — Record, bill of exceptions, or transcript.

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VII. CONDUCT OF ELECTION.(Cont'd)

- 576. — Hearing and scope of inquiry or review in general.
- 577. — Review of questions of fact.
- 578. — Harmless error.
- 579. — Determination.
- 580. Costs.
- 581. — In general.
- 582. — Security.

VIII. DISCRIMINATION; VOTING RIGHTS ACT.

- 590. In general.
- 591. Racial and language minorities in general.
- 592. Sex.
- 593. Age.
- 594. Constitutional and statutory provisions.
- 595. — In general; power to prohibit discrimination.
- 596. — Purpose and construction in general.
- 597. — Retroactive operation.
- 598. Discriminatory practices proscribed in general.
- 599. Dilution of voting power in general.
- 600. Election officials' actions.
- 601. — In general.
- 602. — Registration.
- 603. — Felon disenfranchisement.
- 604. — Voting procedures.
- 605. Voting prerequisites; tests and devices.
- 606. — In general.
- 607. — Identification of voters.
- 608. — Literacy tests.
- 609. — Bailout suits.
- 610. Apportionment and reapportionment.
- 611. — In general.
- 612. — Power and duty to apportion.
- 613. — Method of apportionment.
- 614. — Vote dilution.
 - (1). In general.
 - (2). Compactness and cohesiveness of minority group.
 - (3). Racially polarized or bloc voting.
 - (4). Gerrymandering of equipopulous districts.
- 615. — Equality of representation and discrimination.

VIII. DISCRIMINATION; VOTING RIGHTS ACT.(Cont'd)

- (1). In general.
- (2). Population as basis and deviation therefrom.
- (3). Dispersal or concentration of minority voters.
- (4). Majority-minority districts.
- (5). Political subdivision boundaries.
- 616. — Effect of illegal apportionment.
- 617. At-large elections.
- 618. — In general.
- 619. — Vote dilution.
 - (1). In general.
 - (2). Compactness and cohesiveness of minority group.
 - (3). Racially polarized or bloc voting.
- 620. Federal preclearance of changes in voting procedure.
- 621. — In general; covered jurisdictions.
- 622. — Acts requiring preclearance.
- 623. — Submission of change.
- 624. — Attorney General proceedings; nonobjection to change.
- 625. — Effect of preclearance or failure to obtain preclearance.
- 626. — Bailout suits; judicial preclearance.
- 627. — Enforcement of preclearance requirement.
- 628. Judicial review or intervention.
- 629. — In general.
- 630. — Exhaustion of administrative remedies.
- 631. — Parties; standing.
- 632. — Scope of review.
- 633. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 634. — Relief in general.
 - (1). In general.
 - (2). Appointment of observers or referees.
 - (3). Suspension of tests or devices.
 - (4). Cumulative voting.
- 635. — Costs and attorney fees.
 - (1). In general.

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VIII. DISCRIMINATION; VOTING RIGHTS ACT.(Cont'd)

- (2). Prevailing party.
- (3). Amount of award.

IX. BALLOT MEASURES; INITIATIVE AND REFERENDUM IN GENERAL.

- 640. In general.
- 641. Right to initiative, referendum, and other ballot measures; constitutional limitations.
- 642. Constitutional and statutory provisions.
- 643. — In general.
- 644. — Construction and operation in general.
- 645. — Validity.
- 646. Matters subject to initiative or submission.
- 647. Construction of proposals, in general.
- 648. Notice to voters; publication.
- 649. Petitions.
- 650. — In general.
- 651. — Sufficiency.
- 652. — Distribution, solicitation, and circulation.
- 653. — Signatures and signers.
- 654. Authentication or certification; circulator's affidavits.
- 655. Identity of proponents.
- 656. Election in general.
- 657. Date of election.
- 658. Separate vote or submission requirement.
- 659. Single or multiple subjects.
- 660. Ballots in general.
- 661. Ballot title.
- 662. Captions.
- 663. Summaries, explanatory statements, and statements of purpose.
- 664. Submission clauses.
- 665. Canvassing or tabulation of votes.
- 666. Number of votes necessary.
- 667. Expenditures; fiscal matters and disclosures.
- 668. Executive proclamation of enactment.
- 669. Severability of proposals.
- 670. Judicial proceedings.
- 671. — In general.
- 672. — Pre-election challenges or review.
- 673. — Post-election challenges or review.

IX. BALLOT MEASURES; INITIATIVE AND REFERENDUM IN GENERAL.(Cont'd)

- 674. — Further review.
- 675. Evidence.

X. OFFENSES AND PROSECUTIONS.

(A) IN GENERAL.

- 680. In general.
- 681. Constitutional and statutory provisions.
- 682. — In general.
- 683. — Purpose and construction in general.
- 684. — Retroactive operation.
- 685. Fraudulent registration.
- 686. Illegal voting.
- 687. Offenses by officers.
- 688. — In general.
- 689. — Offenses by election officers.
- 690. Betting on election.
- 691. Bribery.
- 692. Corrupt practices in general.
- 693. — In general.
- 694. — Coercion of employees by employer.
- 695. Fraud.
- 696. Obstruction of or interference with voters or officers.
- 697. Intimidation and violence.
- 698. Campaign finance.
- 699. — In general.
- 700. — Conversion of funds.
- 701. Defenses.
- 702. Persons liable.

(B) PROSECUTIONS.

- 710. In general.
- 711. Jurisdiction and venue.
- 712. Preliminary proceedings.
- 713. Arrest of voter at polls.
- 714. Indictment or information.
- 715. — In general.
- 716. — Illegal registration or voting.
- 717. — Offenses by officers.
- 718. — Bribery.
- 719. — Intimidation, violence, and interference.
- 720. — Issues, proof, and variance.
- 721. Evidence.
- 722. — In general.

X. OFFENSES AND PROSECUTIONS.(Cont'd)

- 723. — Admissibility.
- 724. — Presumptions and burden of proof.
- 725. — Weight and sufficiency.
 - (1). In general.
 - (2). Fraudulent registration.
 - (3). Illegal voting.
- 726. Trial.
- 727. — In general.
- 728. — Questions of law and fact.
- 729. — Instructions.
- 730. — Verdicts and findings.
- 731. Sentence and punishment.

143. ELECTION OF REMEDIES

SUBJECTS INCLUDED

Choice between different means of redress afforded by law for the same injury or different forms of proceeding on the same cause of action

When such election is allowed or required

Nature, requisites, operation and effect of such election

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indictments, election between counts, see INDICTMENT AND INFORMATION

Particular transactions, election between remedies incident to, see CARRIERS, INSURANCE, SALES and other specific topics

Pleading, election between counts, see PLEADING

Substantive inconsistent or alternative rights, claims, etc., election between, see CONTRACTS, PRINCIPAL AND AGENT and other specific topics

- 1. Nature and grounds in general.
- 2. Causes of action and remedies subject to election.
- 3. Inconsistency of alternative remedies.
 - (1). In general.

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- (2). Action operating as affirmance of contract barring remedy on theory of nonexistence.
- (3). Action operating as denial of contract as barring relief on contract.
- (4). Remedies against different persons.
- 4. Right of election.
- 5. Necessity and time for election.
- 6. Compelling election between remedies at law and in equity.
- 7. Acts constituting election.
 - (1). In general.
 - (2). Notice of intention to pursue particular remedy.
 - (3). Presentation of claim in proceedings for settlement of estate of insolvent or decedent.
 - (4). Subsequent action as election against prior.
- 8. Validity and finality of election.
- 9. — In general.
- 10. — Mistake or ignorance of facts.
- 11. — Mistake as to remedy.
- 12. — Want of jurisdiction or ineffectiveness of remedy.
- 13. Operation and effect.
- 14. — In general.
- 15. — Remedies barred.
- 16. Pleading.

145. ELECTRICITY

SUBJECTS INCLUDED

Regulation of the production and use of electricity, and of machinery, structures and apparatus employed therein, in general

Supply of electricity as a motive power, or for illuminating, heating or other purposes

Rights, duties and liabilities incident thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Eminent domain, exercise of power, see EMINENT DOMAIN

145. ELECTRICITY

Employers' duties and liabilities for injuries to employees, see LABOR AND EMPLOYMENT, WORKERS' COMPENSATION

Environmental regulation of general applicability, see ENVIRONMENTAL LAW

Municipalities, powers of, see MUNICIPAL CORPORATIONS

Navigable waters, federal regulation of power projects, see WATER LAW

United States, rural electrification and similar projects, see UNITED STATES

Use of electricity in operation of—

Railroads, see RAILROADS, URBAN RAILROADS

Telecommunications facilities, see TELECOMMUNICATIONS

1. Regulation in general; statutes and ordinances.

1.5. Establishment or acquisition of plant by public authorities.

2. Electric companies.

2.1. — In general.

3. — Incorporation and organization.

4. — Franchises and privileges in general.
See also §8.1, below.

5. — Conflicting grants of rights in streets and roads.

6. — Rights of abutting owners.

7. — Relative rights as to interfering currents of different lines.

8. — Indebtedness, liens, and mortgages.

8.1. Franchises and privileges in general.
See also MUNICIPAL CORPORATIONS §285, 680.

(1). In general; convenience and necessity in general.

(2). Service areas; competition.

(2.1). — In general.

(3). — Cooperatives and associations.

(4). Proceedings and review; injunction.

8.4. Generating facilities in general.

8.6. Environmental considerations in general.

8.7. Nuclear power.

(1). In general.

(2). Environmental and safety considerations.

Excludes nuclear waste and effluents, see ENVIRONMENTAL LAW §485. Excludes environmental regu-

lation of general applicability, see ENVIRONMENTAL LAW.

9. Transmission facilities.

(1). In general; easements.

See also HIGHWAYS §88 and MUNICIPAL CORPORATIONS §679 et seq.

(2). Permit or consent by public authorities.

(3). Removal or change of location of poles and other apparatus.

(4). Injuries to water pipes by electrolysis.

(5). Environmental considerations.

Environmental regulation of general applicability, see ENVIRONMENTAL LAW.

10. Licenses and taxes.

11. Supply of electricity in general.

(1). In general.

(2). Duty to supply, conditions, and discrimination.

(3). Contracts for supply in general.

See also SALES.

(4). Regulation of supply and use.

(5). Supply by municipalities.

11.1. Discontinuance of supply.

(1). In general.

(2). Actions.

(3). Damages and penalties.

11.2. Rates and charges in general.

(1). In general.

(2). Contract rates.

(3). Charges of municipalities.

11.3. Regulation of charges.

(1). In general.

(2). Determination of rate base.

(3). Valuation of property and depreciation.

(4). Operating expenses.

(5). Reasonableness of charges.

(6). Proceedings before commissions.

(7). Judicial review and enforcement.

11.4. Payment and collection of charges.

11.5. Discrimination and overcharge.

(1). In general.

(2). Actions by consumers.

12. Injuries incident to production or use.

12.1. — In general.

13. — Nature and grounds of liability.

14. — Care required in general.

(1). In general.

(2). Dependent on location of wires.

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- (3). Customary methods and use of safest and best appliances.
- 15. — Licensees and trespassers.
 - (1). In general.
 - (2). Liability in respect to persons working about wires.
- 16. — Defects, acts, or omissions causing injury.
 - (1). In general.
 - (2). Insulation of wires.
 - (3). Injuries from broken or sagging wires.
 - (4). Prevention of contact between different wires or conductors.
 - (5). Inspection and knowledge of defects or dangers.
 - (6). Violation of ordinance.
 - (7). Proximate cause of injury.
- 17. — Companies and persons liable.
- 18. — Contributory negligence.
 - (1). In general.
 - (2). Reliance on care of owner of wire.
 - (3). Precautions against injury.
 - (4). As proximate cause of injury.
- 19. — Actions.
 - (5). In general.
 - (1). Parties.
 - (2). Pleading.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (6). Questions for jury.
 - (6.1). — In general.
 - (7). — Insulation of wires.
 - (8). — Injuries from broken or sagging wires.
 - (9). — Prevention of contact between different wires or conductors.
 - (10). — Inspection and knowledge by defendant of defects or dangers.
 - (11). — Companies or persons liable for injuries.
 - (12). — Contributory negligence.
 - (13). Instructions and verdict and findings.

- 20. Injuries to works, conductors, or appliances.
- 21. Offenses incident to production, supply, or use.

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SUBJECTS INCLUDED

Fraudulent appropriation of personal property by one in possession thereof, to whom it has been entrusted by or for the owner, as bailee, servant, agent, trustee, public officer, etc.

Nature and elements of the crimes of embezzlement, larceny by bailee, or after trust, etc., including offenses categorized as larceny by statute, if the same elements would have constituted embezzlement at common law

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Civil liability for conversion, see BAILMENT, CONVERSION AND CIVIL THEFT

Fraudulently obtaining property in possession of another, see FALSE PRETENSES, LARCENY

- 1. Nature of offense in general.
- 2. Statutory provisions.
- 3. Elements of offenses.
- 4. — In general.
- 5. — Intent.
- 6. — Nature of property.
- 7. — Value of property.
- 8. — Ownership of property.
- 9. — Possession or custody of property.
- 10. — Capacity or character in which property is received or held.
- 11. — Conversion or appropriation of property.
 - (1). In general.
 - (2). By public officers or employees.

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- 12. Embezzlement by particular classes of persons.
- 12.1. — In general.
- 13. — Servants, clerks, and employees in general.
- 14. — Agents.
- 15. — Partners.
- 16. — Bailees or others having possession under agreement.
- 17. — Attorneys.
- 18. — Guardians, administrators, or trustees.
- 19. — Assignees in insolvency or bankruptcy.
- 20. — Corporate officers or employees.
- 21. — Public officers or employees.
- 22. Degrees.
- 23. Defenses.
- 24. Persons liable.
- 25. Indictment or information.
- 25.1. — In general.
- 26. — Requisites and sufficiency in general.
- 27. — Intent.
- 28. — Description of property.
- 29. — Value of property.
- 30. — Ownership of property.
- 31. — Possession or custody of property.
- 32. — Capacity or character in which property was received or held.
- 33. — Conversion or appropriation of property.
- 34. — Against public officer.
- 35. — Issues, proof, and variance.
- 36. Presumptions and burden of proof.
- 37. Admissibility of evidence.
- 38. — In general.
- 39. — Intent.
- 40. — Identity and ownership of property.
- 41. — Possession or custody of property and character thereof.
- 42. — Incriminating circumstances.
- 43. — Matters of defense.
- 44. Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Intent.
 - (3). Value of property.
 - (4). Identity and ownership of property.

- (5). Possession or custody of property and character thereof.
- (6). Conversion or appropriation of property.
- 45. Trial.
- 45.1. — In general.
- 47. — Questions for jury.
- 48. — Instructions.
 - (1). In general.
 - (2). Intent.
 - (3). Possession or custody of property and character thereof.
 - (4). Conversion or appropriation of property.
- 49. — Verdict.
- 52. Sentence and punishment.

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SUBJECTS INCLUDED

Taking property from its owner for public use
Nature, extent and delegation of the power in general, and constitutional and statutory provisions relating thereto

What property is subject thereto, for what uses or purposes the power may be exercised, and necessity therefor

Necessity and sufficiency of compensation

Proceedings for condemnation of property and for assessment of compensation

What constitutes compensable taking of or injury to property, and rights and remedies of the owners

Rights acquired by exercise of power of eminent domain, and effect of abandonment of property or of public use thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Condemnation or abatement of unsafe or unhealthful structures, see HEALTH, MUNICIPAL CORPORATIONS, NUISANCE

Damages for change of grade or construction of highway under special statutes, see HIGHWAYS, MUNICIPAL CORPORATIONS

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Voluntary dedication of property to public use, see DEDICATION

War, taking or use of property for military purposes, see WAR AND NATIONAL EMERGENCY

I. NATURE, EXTENT, AND DELEGATION OF POWER, ¶1-68.

II. COMPENSATION, ¶69-165.

(A) NECESSITY AND SUFFICIENCY IN GENERAL, ¶69-80.

(B) TAKING OR INJURING PROPERTY AS GROUND FOR COMPENSATION, ¶81-121.

(C) MEASURE AND AMOUNT, ¶122-150.

(D) PERSONS ENTITLED AND PAYMENT, ¶151-165.

III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION, ¶166-265.

IV. REMEDIES OF OWNERS OF PROPERTY; INVERSE CONDEMNATION, ¶266-316.

V. TITLE OR RIGHTS ACQUIRED, ¶317-325.

I. NATURE, EXTENT, AND DELEGATION OF POWER.

1. Nature and source of power.

2. What constitutes a taking; police and other powers distinguished. *See also* ¶63, 266 *et seq.*, below.

2.1. — In general.

2.2. — Particular acts and regulations.

2.3. — Municipal corporations and local government in general; annexation of territory.

2.4. — Taxes, licenses, assessments, and users' fees in general.

2.5. — Contracts in general; creditors' rights.

2.6. — Agriculture.

2.7. — Animals.

2.8. — Aviation; airports and overflights.

2.9. — Banking.

2.10. — Zoning, planning, or land use; building codes.

(1). In general.

(2). Redevelopment.

(3). Nuisance and demolition.

(4). Zoning and permits.

(5). — In general.

I. NATURE, EXTENT, AND DELEGATION OF POWER.(Cont'd)

(6). — Particular cases.

(7). Exactions and conditions.

2.11. — Utilities in general.

2.12. — Electricity; power lines.

2.13. — Mining.

2.14. — Oil and gas.

2.15. — Telecommunications.

2.16. — Railroads.

2.17. — Waters and water courses; flooding.

(1). In general.

(2). Water rights.

(3). Water supply.

(4). Navigation.

(5). Flooding.

2.18. — Drains and sewers.

2.19. — Highways and streets.

(1). In general.

(2). Construction and maintenance.

2.20. — Billboards and signs.

2.21. — Labor and employment in general.

2.22. — Education.

2.23. — Escheat; unclaimed property.

2.24. — Armed services; military; national security.

2.25. — Fish or game.

2.26. — Health.

2.27. — Environmental protection.

(1). In general.

(2). Wetlands and coastal protection.

(3). Historic preservation; landmarks.

2.28. — Welfare and government benefits in general.

2.29. — Medicaid and Medicare.

2.30. — Child or family support; reimbursement of welfare payments.

2.31. — Rent control; housing.

2.32. — Nonresidential real estate.

2.33. — Government contracts.

2.34. — Intellectual property; copyrights, trade secrets, patents.

2.35. — Criminal justice in general.

2.36. — Weapons.

2.37. — Seizure of evidence.

2.38. — Forfeitures.

2.39. — Prisons and convicts.

2.40. — Damages.

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I. NATURE, EXTENT, AND DELEGATION OF POWER.(Cont'd)

- (1). In general.
- (2). Punitive damages.
- (3). Statutory damages caps.
- 2.41. — Appointment of counsel; legal services.
- 2.42. — Automobiles.
- 2.43. — Indians.
3. Constitutional and statutory provisions.
4. Power of state in general.
5. Power of United States.
6. Delegation of power.
- 6.1. — In general.
7. — Necessity of legislative authority.
8. — Construction and operation of legislative acts in general.
9. — To municipality.
10. — To private corporation.
 - (1). In general.
 - (2). Telecommunications companies.
 - (3). Foreign corporations and corporations subordinate thereto.
 - (4). Lessees or successors of corporations to which power has been delegated.
11. — To individual.
12. Public use.
13. — In general.
14. — Extent of use or benefit.
15. — Destruction of property.
16. Particular uses or purposes.
17. — In general.
18. — Public buildings or grounds, or other purposes of government.
- 18.5. — Urban renewal; blight.
19. — Highways or other roads or ways.
20. — Railroads.
 - (1). In general.
 - (2). Depots, water stations, and side tracks.
 - (3). Terminal companies.
 - (4). Lines limited to passenger or to freight traffic.
 - (5). Branches, spurs, and private lines.
 - (6). Street railroads.
21. — Bridges.
22. — Ferries.
23. — Canals.

I. NATURE, EXTENT, AND DELEGATION OF POWER.(Cont'd)

24. — Improvement of navigation.
25. — Wharves, piers, or docks.
26. — Chutes or booms for logging.
27. — Improvement of water courses, lakes, or ponds.
28. — Water supply in general.
29. — Irrigation.
30. — Levees or dikes.
31. — Drainage of lands.
32. — Sewers.
33. — Development or working of mines.
34. — Production and supply of oil or gas.
35. — Production and supply of electric power or light.
36. — Telegraphs or telephones.
37. — Mills.
38. — Warehouses or elevators.
39. — Markets.
40. — Schools.
41. — Parks and reservations.
42. — Cemeteries.
44. Property subject to appropriation.
45. — In general.
46. — Public property.
47. — Property previously devoted to public use.
 - (1). In general.
 - (2). Locating railroad or street railroad on land or right of way of another railroad or street railroad.
 - (3). Locating telegraph or telephone line on land or right of way of railroad.
 - (4). Locating cemetery on land of another cemetery.
 - (5). Laying out streets and sewers.
 - (6). Appropriating highways, streets, and parks.
 - (7). Necessity of second appropriation.
48. — Franchises.
49. — Limited estates or interests.
50. — Easements or other rights in real property.
51. — Materials for construction of works.
52. — Exemptions.
53. Statutory exercise of power.
54. Exercise of delegated power.

148. EMINENT DOMAIN

I. NATURE, EXTENT, AND DELEGATION OF POWER.(Cont'd)

- 55. — In general.
- 56. — Necessity for appropriation.
- 57. — Discretion in exercise of power.
- 58. — Extent of appropriation.
- 59. — Exhaustion or further exercise of power.
- 60. Taking for private use.
- 61. — In general.
- 62. — Consent of owner.
- 63. When taking is complete; date of taking.
See also ¶2, above and ¶124, below. Means when is appropriation complete. Excludes what constitutes exercise of power of eminent domain (see ante, 2).
- 64. Persons entitled to question power.
- 65. Determination of questions as to validity of exercise of power.
 - 65.1. — In general.
- 66. — Jurisdiction of courts in general.
- 67. — Conclusiveness and effect of legislative action.
- 68. — Conclusiveness and effect of exercise of delegated power.

II. COMPENSATION.

(A) NECESSITY AND SUFFICIENCY IN GENERAL.

- 69. Necessity of making compensation in general.
- 70. Constitutional provisions.
- 71. Sufficiency of statutory provisions for compensation.
- 72. Imposition of conditions.
- 73. Necessity of payment before taking.
- 74. — In general.
- 75. — Taking by United States, state, or municipality.
- 76. — Entry on making deposit or payment into court.
- 77. — Entry on giving security.
- 78. — Sufficiency of remedy by judgment and execution.
- 79. Waiver of, or estoppel to claim, compensation.

(B) TAKING OR INJURING PROPERTY AS GROUND FOR COMPENSATION.

- 81. Property and rights subject of compensation.
 - 81.1. — In general.
- 82. — Real property in general.

II. COMPENSATION.(Cont'd)

- 83. — Rights in public lands.
- 84. — Water rights.
- 85. — Easements and other rights in real property.
- 86. — Franchises.
- 87. — Personal property and rights therein.
- 89. Nature of injury to property not taken.
- 90. — In general.
- 91. — General or special injuries.
- 92. — Proper or improper construction or operation of works.
- 93. — Direct or remote, contingent, or prospective consequences or losses.
- 94. Elements of compensation for injuries to property not taken.
 - 95. — In general.
 - 96. — Taking part of tract.
 - 97. — Taking water rights.
 - 98. — Alteration of flow or discharge of water.
 - 99. — Prevention of access to navigable waters.
- 100. — Occupation or use of street or other highway.
 - (1). In general.
 - (2). Use by railroads.
 - (3). Use by street railroads.
 - (4). Use by elevated railroads.
 - (5). Rights of owners of land not abutting on street taken.
 - (6). Vacation.
- 101. — Alteration of grade of street or other highway.
 - (1). In general.
 - (2). By railroad or street railroad.
- 102. — Inconvenience in use of property.
- 103. — Necessity for fences or crossings.
- 104. — Effect of smoke, foul odors, noise, or vibration.
- 105. — Obstruction of light or air.
- 106. — Obstruction of access.
- 107. — Interference with trade or business.
- 108. — Interference with franchise.
- 109. — Danger of personal injury.
- 110. — Danger of injury to animals.
- 111. — Danger from fire.

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II. COMPENSATION.(Cont'd)

- 112. — Injuries from construction or operation of works.
- 113. — Effect on value of property of construction or operation of works.
- 114. Temporary use.
- 114.1. — In general.
- 116. — Use during construction of works.
- 117. Appropriation to new or additional use.
- 118. — In general.
- 119. — Streets or other highways.
 - (1). In general.
 - (2). Occupation by railroads in general.
 - (3). Occupation by electric railroads.
 - (4). Occupation by elevated railroad.
 - (5). Construction of station houses and electric plants.
 - (6). Construction of additional tracks.
 - (7). Occupation by electric light or power, telegraph, or telephone poles and wires.
 - (8). Laying underground conduits, pipes, and sewers.
 - (9). Construction of trestles, viaducts, and approaches.
 - (10). Construction of tunnels and subways.
 - (11). Construction of bicycle paths.
- 120. — Railroad rights of way.
- 121. Corporations and persons liable for compensation.

(C) MEASURE AND AMOUNT.

- 122. Necessity of just or full compensation or indemnity.
- 123. Sufficiency of statutory provisions as to amount.
- 124. Time with reference to which compensation to be made.
See also §63, above. Excludes time from which to compute interest, see 148, post.
- 125. Nature and extent of right taken.
- 126. — In general.
 - (1). In general.
 - (2). Waterworks or gas system.
 - (3). Water rights.
- 127. — Streets or other highways.
- 128. — Railroad rights of way.
 - (1). In general.

II. COMPENSATION.(Cont'd)

- (2). Appropriations for railroad crossing.
- (3). Appropriation for street crossing.
- 129. Taking entire tract or piece of property.
- 130. — In general.
- 131. — Value of land.
- 132. — Growing trees and crops.
- 133. — Improvements and fixtures.
- 134. — Value for special use.
- 135. Taking part of tract or property.
- 136. — In general.
- 137. — Land constituting single tract.
- 138. — Injuries to part not taken.
- 139. Injuries to property not taken.
- 140. — In general.
- 141. — Depreciation of value.
 - (1). In general.
 - (2). Occupation of street by railroad.
 - (3). Alteration of grade of street.
- 142. — Inconvenience in use.
- 143. Temporary use of property.
- 144. Deduction or set-off of benefits.
- 145. — In general.
 - (1). In general.
 - (2). Occupation of street by railroad.
 - (3). Alteration of grade of street.
 - (4). Opening or altering street or highway.
 - (5). Railroad right of way.
- 146. — General or special benefits.
- 147. Limited estates or interests in property.
- 148. Interest as element, and damages for delay in payment, of compensation.
- 149. Amount awarded in general.
 - (1). In general.
 - (2). Nature and use of property.
 - (2.1). — In general.
 - (3). — Commercial or industrial property.
 - (4). — Farm, rural, or timber land.
 - (5). Limited estates or interests.
 - (6). Nature and extent of taking or damage.
 - (7). Consequential or severance damages; expenses.
- 149.5. Nominal or substantial damages.
- 150. Inadequate or excessive compensation.

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(D) PERSONS ENTITLED AND PAYMENT.

151. Persons entitled.
152. — In general.
 - (1). In general.
 - (2). Life tenant or remainderman.
153. — Vendor or purchaser.
154. — Mortgagor or mortgagee.
155. — Landlord or tenant.
156. — Executors, administrators, devisees, or heirs.
157. Apportionment.
158. Determination of conflicting claims.
159. Duties as to payment.
160. — In general.
161. — Conflicting claims.
162. — Unknown owners.
163. Requisites and sufficiency of payment.
164. Operation and effect of payment.
165. Recovery of payments.

III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.

166. Nature and form of proceeding.
167. Statutory provisions and remedies.
 - (1). In general.
 - (2). Validity.
 - (3). Exclusiveness of statutory remedy.
 - (4). Strict compliance with statutory requirements.
 - (5). Revision and repeal of statutes.
168. Right to institute proceedings.
 - (1). In general.
 - (2). Public officer or corporation.
 - (3). Owner of land.
169. Conditions precedent in general.
170. Negotiations, offer to purchase, and inability to agree with owner.
171. Defenses and objections.
172. Jurisdiction.
173. Venue.
174. Time for application.
175. Parties.
 - 175.1. — In general.
176. — Petitioner or complainant.
177. — Defendants.
178. — Intervention or substitution.
- 178.5. Abatement and revival of proceedings.
179. Process or notice.
 - 179.1. — In general.

III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION. (Cont'd)

180. — Necessity.
181. — Form, requisites, and sufficiency.
182. — Service.
183. — Return and proof of service.
184. — Defects, objections, and amendment.
185. Appearance and representation by attorney.
186. Maps, plans, or surveys.
187. Possession and use pending proceedings; injunction.
188. Bond or deposit as security.
189. Pleading.
 - 189.1. — In general.
190. — Mode and form in general.
191. — Petition or complaint.
 - (1). In general.
 - (2). Showing right and capacity to institute proceedings.
 - (3). Showing public purpose and necessity.
 - (4). Showing intention to complete work.
 - (5). Showing inability to agree with owner.
 - (6). Description of property and interests affected.
 - (7). Showing location, route, and termini.
 - (8). Designating owners of property.
192. — Answer and cross-petition.
193. — Demurrer.
194. — Amendments.
195. — Issues, proof, and variance.
196. Evidence as to right to take.
197. Dismissal before hearing.
198. Hearing and determination as to right to take.
 - (1). In general.
 - (2). Questions for jury.
199. Evidence as to compensation.

Excludes: evidence of value of, or price paid for, other property (see EVIDENCE ¶142); market value as shown by hearsay evidence of sales, offers to sell, or market quotations (see EVIDENCE ¶323); price previously paid or offered (see EVIDENCE ¶113(8, 16)); expert testimony (see EVIDENCE ¶524, 543(3), 571(7)).

 - 199.1. — In general.
200. — Presumptions and burden of proof.

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III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)

- 201. — Admissibility in general.
- 202. — Value of property.
 - (1). In general.
 - (2). Comparison with other property.
 - (4). Value for special purposes.
 - (6). Assessed valuation.
 - (7). Rental value.
 - (8). Turnpike.
 - (9). Water plant.
- 203. — Damages.
 - (1). In general.
 - (2). Depreciation of value.
 - (3). Depreciation of mortgage value.
 - (4). Depreciation of rental value.
 - (5). Comparison with other property.
 - (6). Offers to buy or sell.
 - (7). Interference with trade or business.
- 204. — Benefits.
- 205. — Weight and sufficiency.
- 206. Mode of assessment of compensation.
- 207. — In general.
- 208. — Arbitration.
- 209. — Trial by jury.
- 210. — Assessment by commissioners, appraisers, or viewers.
- 211. — Trial by court or referee.
- 212. Arbitration and award.
- 213. Assessment by jury.
- 213.1. — In general.
- 214. — Application and proceedings thereon.
- 215. — Qualifications of jurors.
- 216. — Summoning and impaneling jurors.
- 217. — Oath of jurors.
- 218. — Compensation of jurors.
- 219. — Conduct of proceedings in general.
- 220. — View.
- 221. — Questions for jury.
- 222. — Instructions.
 - (1). In general.
 - (2). Necessity and authority to instruct jury.
 - (3). Effect of view as evidence.
 - (4). Value of property.
 - (5). Damages.
 - (6). Benefits.

III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)

- 223. — Verdict and findings.
- 224. Setting aside verdict and new trial.
- 225. Assessment by commissioners, appraisers, or viewers.
- 225.1. — In general.
- 226. — Application and proceedings thereon.
- 227. — Qualifications.
- 228. — Appointment and removal.
- 229. — Oath.
- 230. — Compensation.
- 231. — Conduct of proceedings in general.
- 232. — View.
- 233. — Scope of inquiry and questions to be determined.
- 234. — Report and findings or award.
 - (1). In general.
 - (2). Description of property affected.
 - (3). Severance as to parcels, parties, and elements of damage.
 - (4). Designation of owners or persons entitled to compensation.
 - (5). Filing report and notice.
 - (6). Correction and amendment.
- 235. — Objections and exceptions.
- 236. — Recommittal.
- 237. — Confirmation or setting aside of report or award.
 - (1). In general.
 - (2). Authority to confirm or set aside.
 - (3). Error in reception of evidence.
 - (4). Disqualification or misconduct of or affecting commissioners, appraisers, or viewers.
 - (5). Error in assessing damages.
 - (6). Modification.
 - (7). Proceedings to confirm or set aside.
- 238. — Review by court.
 - (5). In general.
 - (1). Nature and form of remedy and jurisdiction.
 - (2). Decisions reviewable.
 - (3). Right of review and parties.
 - (4). Proceedings for transfer of cause and effect of appeal.
 - (5). Record.
 - (6). Trial or review.

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III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)

- (7). Determination and disposition of cause.
- 239. — Trial by jury on appeal.
- 240. Assessment by court or referee.
- 241. Requisites and entry of judgment.
- 242. Collateral attack.
- 243. Conclusiveness and effect of award or judgment in general.
 - (1). In general.
 - (2). Matters concluded.
 - (3). Persons concluded.
- 244. Effect of award or judgment as to right to possession of property.
- 245. Right to compensation awarded.
- 246. Effect of abandonment or dismissal of proceedings.
 - (1). In general.
 - (2). Right to discontinue or abandon proceedings.
 - (3). Acts constituting abandonment.
 - (4). Liability for damages on discontinuing or abandoning proceedings.
 - (5). Liability for compensation awarded.
- 247. Interest on award or judgment.
 - (1). In general.
 - (2). Time during which interest runs.
 - (3). Necessity and sufficiency of demand.
 - (4). Effect of deposit of amount of award.
- 248. Lien of award or judgment.
- 249. Enforcement of award or judgment; injunction.
- 250. Appeal.
- 250.1. — In general.
- 251. — Nature and form of remedy.
- 252. — Appellate jurisdiction.
- 253. — Decisions reviewable.
 - (1). In general.
 - (2). Decisions determining right to take or appointing commissioners.
 - (3). Decisions confirming report or award.
 - (4). Decisions on motion to set aside award or for new trial.

III. PROCEEDINGS TO TAKE PROPERTY AND ASSESS COMPENSATION.(Cont'd)

- 254. — Right of review.
- 255. — Presentation and reservation in lower court of grounds of review.
- 256. — Partics.
- 257. — Taking and perfecting appeal.
- 258. — Effect of appeal and supersedeas.
- 259. — Record.
- 261. — Trial de novo.
- 262. — Review.
 - (1). In general.
 - (2). Parties entitled to allege error.
 - (3). Presumptions.
 - (4). Questions of fact, verdicts, and findings.
 - (5). Harmless error.
- 263. — Determination and disposition of cause.
- 264. Review on certiorari.
- 265. Costs, fees, and expenses.
 - (1). In general.
 - (2). Persons liable.
 - (3). Amount, rate, and items.
 - (4). On appeal or error or on new trial.
 - (5). Liability for costs and expenses on abandoning proceedings.

IV. REMEDIES OF OWNERS OF PROPERTY; INVERSE CONDEMNATION.

- 266. Nature and grounds in general.
See also ¶2, *above*.
- 267. Statutory provisions and remedies.
- 268. Recovery of possession of property.
- 269. Compelling proceedings to assess compensation.
- 270. Recovery of compensation.
- 271. Recovery of damages.
- 272. Injunction.
- 272.1. — In general.
- 273. — Grounds of relief in general.
- 274. — Restraining taking of or injury to property.
 - (1). In general.
 - (2). Invalidity of ordinance.
 - (3). Taking property not covered by condemnation proceedings.
 - (4). Failure to compensate owner.
 - (5). Failure to institute proceedings.
- 275. — Restraining construction of works.

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IV. REMEDIES OF OWNERS OF PROPERTY; INVERSE CONDEMNATION.(Cont'd)

- (1). In general.
- (2). Damage to property.
- (3). Taking property not covered by condemnation proceedings.
- (4). Failure to compensate owner.
- (5). Failure to institute proceedings.
- (6). Invalidity of statute.
- (7). Defective proceedings.
- 276. — Restraining operation of works.
- 277. Conditions precedent to action; ripeness.
- 278. Defenses.
- 279. — In general.
 - (1). In general.
 - (2). Grounds for refusing injunction.
- 280. — Consent or acquiescence of owner.
- 281. — Payment of compensation or other satisfaction.
- 282. — Release or discharge.
- 283. — Former adjudication.
- 284. Persons entitled to sue.
- 285. Corporations or persons liable.
- 286. Jurisdiction.
- 287. Venue.
- 288. Limitations and laches.
 - (1). In general.
See also LIMITATION OF ACTIONS.
 - (2). Prescription.
- 289. Parties, process, and appearance.
- 290. Pendency of other action.
- 291. Proceedings to assess compensation pending action.
- 292. Preliminary or interlocutory injunction.
- 293. Pleading.
 - (5). In general.
 - (1). Petition or complaint.
 - (2). Plea, answer and subsequent pleading.
 - (3). Amendment.
 - (4). Issues, proof, and variance.
- 294. Evidence.
- 294.1. — In general.
- 295. — Presumptions and burden of proof.
- 296. — Admissibility in general.
- 297. — Value of property.
- 298. — Damages.
- 299. — Benefits.
- 300. — Weight and sufficiency.
- 301. Damages and amount of recovery.
See also ¶81-121, above.

IV. REMEDIES OF OWNERS OF PROPERTY; INVERSE CONDEMNATION.(Cont'd)

- 302. — In general.
- 303. — Compensation for property taken or for injury.
- 304. — Exemplary damages.
- 305. — Inadequate or excessive damages.
- 306. Permanent injunction or alternative relief.
- 307. Trial.
 - (1). In general.
 - (2). Questions for jury.
 - (3). Instructions.
 - (4). Verdict and findings.
- 308. Judgment or decree.
- 309. Effect of judgment for damages as to title to property.
- 310. Lien of judgment.
- 311. Execution and enforcement of judgment.
- 312. — In general.
- 314. — Stay pending proceedings to assess compensation.
- 315. Appeal and error.
- 316. Costs.

V. TITLE OR RIGHTS ACQUIRED.

- 317. Nature of estate or interest acquired.
 - (1). In general.
 - (2). Title in fee or easement.
 - (3). Rights in adjacent street.
- 318. Extent of right to use of property.
- 319. Estate and rights remaining in owner.
- 320. Time of passing of title or right.
- 321. Duration of rights.
- 322. Transfer of rights.
- 323. Abandonment or nonuser.
- 324. Misuser or diversion.
- 325. Reversion.

149. ENTRY, WRIT OF

SUBJECTS INCLUDED

Actions for recovery of specific real property, founded on mere right of possession there-

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of, with or without incidental recovery of damages for detention or profits, etc. thereof, more particularly writs of entry and statutory possessory actions of similar character

Nature and scope of the remedy in general; grounds of such actions and defenses there-to

By and against whom and as to what property they may be maintained

Procedure therein, and incidental recovery for use and occupation, profits, damages, improvements, etc.

Verdict and judgment and enforcement thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages for wrongful entry upon or injury to real property, recovery of, see TRESPASS

Forcible entry and detainer, actions for, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

Mortgages, writs of entry to foreclose, see MORTGAGES AND DEEDS OF TRUST

Possession merely, actions for recovery of, including possessory actions at civil law, see EJECTMENT, TRESPASS TO TRY TITLE

Real actions founded on right of property, including petitory actions under civil law, see REAL ACTIONS

1. Nature and scope of remedy.
2. Statutory provisions.
3. Grounds.
4. — In general.
5. — Title and right to possession of demandant.
6. — Ouster or disseisin and possession of tenant.
7. Defenses.
8. Persons entitled to sue.
9. Persons against whom action may be brought.
10. Jurisdiction and venue.
11. Time to sue.
See also LIMITATION OF ACTIONS.
12. Parties.
13. Process and appearance.
14. Pleading.
- 14.1. — In general.

15. — Declaration.
16. — Plea.
17. — Disclaimer.
18. — Replication.
19. — Amendments.
20. — Issues, proof, and variance.
21. Evidence.
22. Trial.
23. Judgment.
24. Damages and mesne profits.
25. Improvements.
26. Review.
27. Restitution.

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SUBJECTS INCLUDED

Regulation and protection of the environment under enacted laws of general application; more specifically, laws—

Concerning water, air, and noise pollution

Protecting land and water resources, particularly wilderness areas, wetlands, and coasts and shorelines

Protecting plants and wildlife, particularly endangered or threatened species

Protecting historically significant property, landmarks, archeological sites, antiquities, and the like

Regulating waste disposal and management, including salvage and recycling

Regulating the generation, handling, treatment, storage, disposal, and clean up of hazardous or toxic wastes

Regulating hazardous or toxic materials, including chemicals, petroleum products, poisons, and pesticides

Regulating radioactive or nuclear waste and materials, and the sources thereof

Requiring government actors to prepare environmental assessments or impact statements or otherwise to consider environmental factors

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Agencies for the administration of such laws, their powers and proceedings, and judicial review of their decisions or actions

Citizen suits to enforce such laws

Criminal offenses, prosecutions, and penalties under such laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agricultural use of pesticides and herbicides, see AGRICULTURE

Airport location, construction, and operation, see AVIATION

Common law liability for harm to the environment, see CONTRIBUTION, DAMAGES, INDEMNITY, NEGLIGENCE, NUISANCE, PRODUCTS LIABILITY, TORTS, WATER LAW, and other specific topics

Drainage of swamps and lowlands, see WATER LAW

Electricity, generation and transmission, see ELECTRICITY

Fish and wildlife considered as game animals or as objects of ownership, see ANIMALS, FISH, GAME

Flood control, see WATER LAW

Forest management in general, see WOODS AND FORESTS

Highway and bridge location and construction, see BRIDGES, HIGHWAYS

Indians rights and application of federal laws protecting particular animals, see INDIANS ¶351

Local regulation of garbage collection, noises, odors, and the like, see COUNTIES, TOWNS, MUNICIPAL CORPORATIONS

Local zoning and planning regulations, see ZONING AND PLANNING

Mining and mineral exploration, see MINES AND MINERALS

Public health, see HEALTH

Tobacco sales and advertising, regulation of, see ANTITRUST AND TRADE REGULATION

Water supply, protection of, see WATER LAW

I. IN GENERAL, ¶1-30.

II. LAND USE AND CONSERVATION, ¶31-60.

III. HISTORICAL PRESERVATION, ¶61-110.

IV. WATER, WETLANDS, AND WATERFRONT CONSERVATION, ¶111-160.

V. WATER POLLUTION, ¶161-240.

VI. AIR POLLUTION, ¶241-310.

VII. NOISE POLLUTION, ¶311-340.

VIII. WASTE DISPOSAL AND MANAGEMENT, ¶341-400.

IX. HAZARDOUS WASTE OR MATERIALS, ¶401-470.

X. RADIATION AND NUCLEAR MATERIALS, ¶471-510.

XI. PLANTS AND WILDLIFE, ¶511-570.

XII. ASSESSMENTS AND IMPACT STATEMENTS, ¶571-620.

XIII. JUDICIAL REVIEW OR INTERVENTION, ¶621-730.

XIV. CRIMINAL RESPONSIBILITY, ¶731-762.

I. IN GENERAL.

1. In general.
2. Power to regulate in general.
3. Constitutional provisions, statutes, and ordinances in general.
4. — In general.
5. — Purpose.
6. — Validity.
7. — Construction.
8. — Retrospective application.
9. Concurrent and conflicting statutes or regulations in general.
10. — In general.
11. — Federal preemption.
12. — State preemption of local laws and actions.
13. Regulation and protection in general.
14. Administrative agencies and proceedings in general.
15. — In general.
16. — Regulations and rulemaking in general.
17. — Hearing, evidence, determination, and relief.
18. — Administrative review of administrative decisions.
19. Enforcement in general; penalties and fines.

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I. IN GENERAL.(Cont'd)

20. Private right of action and citizen suits, in general.

II. LAND USE AND CONSERVATION.

31. In general.
32. Power to regulate.
33. Constitutional provisions, statutes, and ordinances.
34. — In general.
35. — Purpose.
36. — Validity.
37. — Construction.
38. — Retrospective application.
39. Concurrent and conflicting statutes or regulations.
40. — In general.
41. — Federal preemption.
42. — State preemption of local laws and actions.
43. Regulation in general.
44. Forest and wilderness management.
Excludes forest management more generally, see WOODS AND FORESTS ¶8.
45. Administrative agencies and proceedings.
46. Enforcement in general; penalties and fines.
47. Private right of action; citizen suits.
48. Evidence.
49. — In general.
50. — Presumptions, inferences, and burden of proof.
51. — Weight and sufficiency.

III. HISTORICAL PRESERVATION.

61. In general.
62. Power to regulate.
63. Constitutional provisions, statutes, and ordinances.
64. — In general.
65. — Purpose.
66. — Validity.
67. — Construction.
68. — Retrospective application.
69. Concurrent and conflicting statutes or regulations.
70. — In general.
71. — Federal preemption.
72. — State preemption of local laws and actions.

III. HISTORICAL PRESERVATION.(Cont'd)

73. Regulation and protection in general.
74. — In general.
75. — Federal regulation.
76. — State and local regulation.
77. Property protected; designation and listing.
78. — In general.
79. — Exemptions.
80. — Removal of protection; delisting.
81. Activities affecting protected property; projects and undertakings regulated.
82. — In general.
83. — Review and consultation requirements; permits and approvals.
84. — Construction, demolition, alteration, or repair.
85. — Surface transportation; highways, roads, and bridges.
86. — Waters and water courses; dams and flood control.
87. — Military projects.
88. — Urban renewal and development; housing projects.
89. — Other particular activities.
90. Archaeological sites and resources; antiquities and artifacts.
91. Administrative agencies and proceedings.
92. — In general.
93. — Regulations and rulemaking in general.
94. — Notice and comment.
95. — Hearing and determination.
96. — Administrative review of administrative decisions.
97. Enforcement in general.
98. Penalties and fines.
99. Private right of action; citizen suits.
100. Evidence.
101. — In general.
102. — Presumptions, inferences, and burden of proof.
103. — Weight and sufficiency.

IV. WATER, WETLANDS, AND WATERFRONT CONSERVATION.

111. In general.
112. Power to regulate.
113. Constitutional provisions, statutes, and ordinances.

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**IV. WATER, WETLANDS, AND WATERFRONT
CONSERVATION.(Cont'd)**

- 114. — In general.
- 115. — Purpose.
- 116. — Validity.
- 117. — Construction.
- 118. — Retrospective application.
- 119. Concurrent and conflicting statutes or regulations.
- 120. — In general.
- 121. — Federal preemption.
- 122. — State preemption of local laws and actions.
- 123. Regulation in general.
- 124. Oceans.
- 125. Coastal areas, bays, and shorelines.
- 126. Rivers, streams, and waterways.
- 127. Lakes and ponds.
- 128. Wetlands.
- 129. Permissible uses and activities; permits and licenses; management.
- 130. — In general.
- 131. — Oceans.
- 132. — Coastal areas, bays, and shorelines.
- 133. — Rivers, streams, and waterways.
- 134. — Lakes and ponds.
- 135. — Wetlands.
- 136. — Discharge or deposit of dredged or fill material.
- 137. — Exceptions, exemptions, and variances.
- 138. Administrative agencies and proceedings.
- 139. — In general.
- 140. — Regulations and rulemaking in general.
- 141. — Notice and comment.
- 142. — Hearing and determination.
- 143. — Administrative review of administrative decisions.
- 144. Enforcement in general.
- 145. Penalties and fines.
- 146. Private right of action; citizen suits.
- 147. Evidence.
- 148. — In general.
- 149. — Presumptions, inferences, and burden of proof.
- 150. — Weight and sufficiency.

V. WATER POLLUTION.

- 161. In general.
- 162. Power to regulate.
- 163. Constitutional provisions, statutes, and ordinances.
- 164. — In general.
- 165. — Purpose.
- 166. — Validity.
- 167. — Construction.
- 168. — Retrospective application.
- 169. Concurrent and conflicting statutes or regulations.
- 170. — In general.
- 171. — Federal preemption.
- 172. — State preemption of local laws and actions.
- 173. Waters protected.
- 174. Substances, sources, and activities regulated.
- 175. — In general.
- 176. — Sewage and sewers.
- 177. — Petroleum.
- 178. — Mines and mining.
- 179. Public facilities and projects.
- 180. Grants and financing.
- 181. Pretreatment programs; removal credit.
- 182. Effluent limitations and guidelines.
- 183. — In general.
- 184. — Technology-based limits.
- 185. — Secondary treatment.
- 186. — Particular limitations and guidelines.
- 187. Water quality standards or plans.
- 188. — In general.
- 189. — Classification of waters; designated uses.
- 190. — Particular water quality standards and criteria.
- 191. — Antidegradation policies and rules.
- 192. — Daily maximum load and limited segments.
- 193. — Interstate pollution.
- 194. Permits and certifications.
- 195. — In general.
- 196. — Discharge of pollutants.
- 197. — Conditions and limitations.
- 198. — Modification or amendment.
- 199. — Revocation.

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V. WATER POLLUTION.(Cont'd)

- 200. Extensions, exceptions, and variances for particular parties.
- 201. — In general.
- 202. — Fundamentally different factors.
- 203. — Cost; hardship; feasibility.
- 204. Compliance and enforcement.
- 205. — In general.
- 206. — Violations and liability in general.
- 207. — Reporting, notice, and monitoring requirements.
- 208. — Defenses.
- 209. — Remedies in general.
- 210. — Abatement.
- 211. — Cease and desist orders.
- 212. — Removal of pollutants.
- 213. Public reimbursement.
- 214. Civil liability; cleanup costs.
- 215. Administrative agencies and proceedings.
- 216. — In general.
- 217. — Regulations and rulemaking in general.
- 218. — Notice and comment.
- 219. — Proceedings in general; hearing and determination.
- 220. — Permit and certification proceedings.
- 221. — Compliance and enforcement proceedings.
- 222. — Administrative review of administrative decisions.
- 223. Penalties and fines.
- 224. Forfeitures.
- 225. Liens.
- 226. Private right of action; citizen suits.
- 227. Evidence.
- 228. — In general.
- 229. — Presumptions, inferences, and burden of proof.
- 230. — Weight and sufficiency.

VI. AIR POLLUTION.

- 241. In general.
- 242. Power to regulate.
- 243. Constitutional provisions, statutes, and ordinances.
- 244. — In general.
- 245. — Purpose.

VI. AIR POLLUTION.(Cont'd)

- 246. — Validity.
- 247. — Construction.
- 248. — Retrospective application.
- 249. Concurrent and conflicting statutes or regulations.
- 250. — In general.
- 251. — Federal preemption.
- 252. — State preemption of local laws and actions.
- 253. Federal regulation.
- 254. — In general.
- 255. — National Ambient Air Quality Standards.
- 256. State and local regulation in general.
- 257. Implementation of federal standards.
- 258. — In general.
- 259. — Inventory, emission limits, and modelling.
- 260. — Monitoring.
- 261. — Contents of implementation plans.
- 262. — Cost and feasibility.
- 263. — Non-attainment areas.
- 264. — Prevention of significant deterioration.
- 265. Permits, licenses, and approvals in general.
- 266. Particular sources of pollution.
- 267. — In general.
- 268. — Stationary sources in general.
- 269. — Power-generating facilities; utilities.
- 270. — Manufacturing facilities; factories and plants.
- 271. — Mines and quarries; refineries and smelters.
- 272. — Waste disposal facilities; incineration.
- 273. — Mobile sources; motor vehicles.
- 274. — Exemptions, extensions, exceptions, and variances.
- 275. Particular pollutants.
- 276. — In general.
- 277. — Particulate matter.
- 278. — Fugitive emissions.
- 279. — Acid rain in general.
- 280. — Sulfur and sulfur dioxide.
- 281. — Nitrogen oxides.
- 282. — Volatile organic compounds.

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VI. AIR POLLUTION.(Cont'd)

- 283. — Lead.
- 284. — Asbestos.
- 285. Indoor air; tobacco.
*Excludes regulation of tobacco sales and advertising.
see ANTITRUST AND TRADE REGULATION.*
- 286. Odor.
- 287. Ozone.
- 288. International issues.
- 289. Administrative agencies and proceedings.
- 290. — In general.
- 291. — Regulations and rulemaking in general.
- 292. — Notice and comment.
- 293. — Hearing and determination; statement of reasons.
- 294. — Administrative review of administrative decisions.
- 295. Enforcement in general.
- 296. Penalties and fines.
- 297. Private right of action; citizen suits.
- 298. Evidence.
- 299. — In general.
- 300. — Presumptions, inferences, and burden of proof.
- 301. — Weight and sufficiency.

VII. NOISE POLLUTION.

- 311. In general.
- 312. Power to regulate.
- 313. Constitutional provisions, statutes, and ordinances.
- 314. — In general.
- 315. — Purpose.
- 316. — Validity.
- 317. — Construction.
- 318. — Retrospective application.
- 319. Concurrent and conflicting statutes or regulations.
- 320. — In general.
- 321. — Federal preemption.
- 322. — State preemption of local laws and actions.
- 323. Regulation in general.
- 324. Highways, roads, and vehicles.
- 325. Aviation and airports.
See also AVIATION.
- 326. Railways.

VII. NOISE POLLUTION.(Cont'd)

- 327. Other particular subjects and regulations.
 - 328. Administrative agencies and proceedings.
 - 329. Enforcement in general; penalties and fines.
 - 330. Private right of action; citizen suits.
 - 331. Evidence.
- ### VIII. WASTE DISPOSAL AND MANAGEMENT.
- 341. In general.
 - 342. Power to regulate.
 - 343. Constitutional provisions, statutes, and ordinances.
 - 344. — In general.
 - 345. — Purpose.
 - 346. — Validity.
 - (1). In general.
 - (2). Flow control measures.
 - 347. — Construction.
 - 348. — Retrospective application.
 - 349. Concurrent and conflicting statutes or regulations.
 - 350. — In general.
 - 351. — Federal preemption.
 - 352. — State preemption of local laws and actions.
 - 353. Regulation in general.
 - 354. Waste subject to regulation.
 - 355. Waste management plans, policies, and programs in general.
 - 356. Landfills and disposal sites.
 - 357. — In general.
 - 358. — Permits, licenses, and approvals in general.
 - 359. — Site selection and location.
 - 360. — Design and construction.
 - 361. — Operation and management.
 - 362. — Modification and expansion.
 - 363. — Closure; inactive sites.
 - 364. — Fees and taxes.
 - 365. — Financial responsibility; bonds and insurance.
 - 366. — Cleanup and remediation; liability.
 - 367. Collection and transportation of waste.
 - 368. — In general.
 - 369. — Temporary disposal sites; transfer facilities.

149E. ENVIRONMENTAL LAW

VIII. WASTE DISPOSAL AND
MANAGEMENT.(Cont'd)

- 370. Incineration.
- 371. Sewage and septic systems.
- 372. Salvage and recycling.
- 373. Interjurisdictional issues.
- 374. — In general.
- 375. — Flow control.
- 376. — Interstate flows, effects, and burdens.
- 377. Administrative and local agencies and proceedings.
- 378. — In general.
- 379. — Regulations and rulemaking in general.
- 380. — Notice and comment.
- 381. — Hearing and determination.
- 382. — Administrative review of administrative decisions.
- 383. Enforcement in general.
- 384. Penalties and fines.
- 385. Private right of action; citizen suits.
- 386. Evidence.
- 387. — In general.
- 388. — Presumptions, inferences, and burden of proof.
- 389. — Weight and sufficiency.

IX. HAZARDOUS WASTE OR MATERIALS.

- 401. In general.
- 402. Power to regulate.
- 403. Constitutional provisions, statutes, and ordinances.
- 404. — In general.
- 405. — Purpose.
- 406. — Validity.
 - (1). In general.
 - (2). Flow control measures.
- 407. — Construction.
- 408. — Retrospective application.
- 409. Concurrent and conflicting statutes or regulations.
- 410. — In general.
- 411. — Federal preemption.
- 412. — State preemption of local laws and actions.
- 413. Hazardous and toxic substances generally.
- 414. — In general.

IX. HAZARDOUS WASTE OR
MATERIALS.(Cont'd)

- 415. — Notice and reporting requirements; listing.
- 416. — Storage in general.
- 417. — Underground tanks.
- 418. — Transportation in general.
- 419. — Pipelines.
- 420. — Other particular subjects and regulations.
- 421. Pesticides, herbicides, insecticides, fungicides, rodenticides.
Excludes agricultural use of such substances, see AGRICULTURE §9.2.
- 422. — In general.
- 423. — Registration and labelling.
- 424. — Other particular subjects and regulations.
- 425. Hazardous, dangerous, or toxic waste.
- 426. — In general.
- 427. — Substances regulated.
- 428. — Persons and activities regulated in general.
- 429. — Generation and handling.
- 430. — Treatment, storage, and disposal; facilities and sites.
- 431. — Transportation.
- 432. — Permits, licenses, and approvals.
- 433. — Incineration.
 - (1). In general.
 - (2). Permits, licenses, and approvals.
- 434. — Fees and taxes.
- 435. — Financial responsibility; bonds and insurance.
- 436. Response and cleanup; liability.
- 437. — In general.
- 438. — Elements in general.
- 439. — Remedial and removal actions in general; cleanup plans.
- 440. — Substances covered.
- 441. — Release and disposal in general.
- 442. — Threatened release.
- 443. — Facilities and properties covered.
- 444. — Persons protected or authorized to undertake removal actions.
- 445. — Persons responsible.
 - (1). In general.
 - (2). Lenders and secured creditors.
 - (3). Joint and several liability; divisibility.

149E. ENVIRONMENTAL LAW

IX. HAZARDOUS WASTE OR MATERIALS.(Cont'd)

- 446. — Covered costs; damages.
- 447. — Contribution and indemnity; allocation of liability.
- 448. — Liens.
- 449. Interjurisdictional issues; flow control.
- 450. Administrative agencies and proceedings.
- 451. — In general.
- 452. — Regulations and rulemaking in general.
- 453. — Notice and comment.
- 454. — Hearing and determination.
- 455. — Administrative review of administrative decisions.
- 456. Enforcement in general.
- 457. Penalties and fines.
- 458. Private right of action; citizen suits.
- 459. — In general.
- 460. — Hazardous, dangerous, or toxic waste.
- 461. — Response and cleanup; monetary relief.
- 462. Evidence.
- 463. — In general.
- 464. — Presumptions, inferences, and burden of proof.
- 465. — Weight and sufficiency.

X. RADIATION AND NUCLEAR MATERIALS.

Nuclear power plants, see also ELECTRICITY ¶8.7.

- 471. In general.
- 472. Power to regulate.
- 473. Constitutional provisions, statutes, and ordinances.
- 474. — In general.
- 475. — Purpose.
- 476. — Validity.
- 477. — Construction.
- 478. — Retrospective application.
- 479. Concurrent and conflicting statutes or regulations.
- 480. — In general.
- 481. — Federal preemption.
- 482. — State preemption of local laws and actions.
- 483. Regulation in general.
- 484. Radioactive or nuclear waste in general.

X. RADIATION AND NUCLEAR MATERIALS.(Cont'd)

- 485. Nuclear power plant wastes and effluents; storage and disposal.
- 486. Nuclear weapons.
- 487. Uranium mining.
- 488. Medical and hospital devices and waste.
- 489. Other particular radiation sources.
- 490. Transportation.
- 491. Cleanup and remediation.
- 492. Administrative agencies and proceedings.
- 493. Enforcement in general; penalties and fines.
- 494. Private right of action; citizen suits.
- 495. Evidence.
- 496. — In general.
- 497. — Presumptions, inferences, and burden of proof.
- 498. — Weight and sufficiency.

XI. PLANTS AND WILDLIFE.

- 511. In general.
- 512. Power to regulate.
- 513. Constitutional provisions, statutes, and ordinances.
- 514. — In general.
- 515. — Purpose.
- 516. — Validity.
- 517. — Construction.
- 518. — Retrospective application.
- 519. Concurrent and conflicting statutes or regulations.
- 520. — In general.
- 521. — Federal preemption.
- 522. — State preemption of local laws and actions.
- 523. Regulation and protection in general.
- 524. — In general.
- 525. — Federal regulation.
- 526. — State and local regulation.
- 527. Plants and animals protected in general.
- 528. Endangered, threatened, or sensitive species.
- 529. "Taking" or harming wildlife.
- 530. Incidental, accidental, or indirect harm.
- 531. Permits and licenses.
- 532. Transportation.
- 533. Commercial use.

149E. ENVIRONMENTAL LAW

XI. PLANTS AND WILDLIFE.(Cont'd)

- 534. Imports and exports.
- 535. Public plans, projects, and approvals; agency action.
- 536. — In general.
- 537. — Consultation.
- 538. Administrative agencies and proceedings.
- 539. — In general.
- 540. — Regulations and rulemaking in general.
- 541. — Notice and comment.
- 542. — Hearing and determination.
- 543. — Administrative review of administrative decisions.
- 544. Enforcement in general.
- 545. Penalties and fines.
- 546. Searches, seizures, and forfeitures.
- 547. Private right of action; citizen suits.
- 548. Evidence.
- 549. — In general.
- 550. — Presumptions, inferences, and burden of proof.
- 551. — Weight and sufficiency.

XII. ASSESSMENTS AND IMPACT STATEMENTS.

- 571. In general.
- 572. Power to regulate.
- 573. Constitutional provisions, statutes, and ordinances.
- 574. Concurrent and conflicting statutes or regulations.
- 575. — In general.
- 576. — Preemption.
- 577. Duty of government bodies to consider environment in general.
- 578. Lead agency; responsible entity.
- 579. Purpose of assessments and statements.
- 580. Preliminary assessment or report.
- 581. — In general.
- 582. — Necessity.
- 583. — Sufficiency.
- 584. Necessity for preparation of statement, consideration of factors, or other compliance with requirements.
- 585. — In general.
- 586. — "Hard look" test; reasoned elaboration.
- 587. — Major government action.

XII. ASSESSMENTS AND IMPACT STATEMENTS.(Cont'd)

- 588. — Impacting human environment.
- 589. — Significance in general.
- 590. — Mitigation measures.
- 591. — Scope of project; multiple projects.
- 592. — Categorical exclusion; exemptions in general.
- 593. — Controversy.
- 594. — Negative declaration; statement of reasons.
- 595. — Particular projects.
 - (1). In general.
 - (2). Land use in general.
 - (3). Waters and water courses; dams and flood control.
 - (4). Electricity, generation and transmission; nuclear.
 - (5). Mining; oil and gas.
 - (6). Waste; hazardous materials.
 - (7). Surface transportation; highways and bridges.
 - (8). Aviation.
- 596. — Proceedings.
- 597. Updated or supplemental statements; recirculation.
- 598. Adequacy of statement, consideration, or compliance.
- 599. — In general.
- 600. — Consideration and disclosure of effects.
- 601. — Consideration of alternatives.
- 602. — Mitigation measures.
- 603. — Cost-benefit analysis.
- 604. — Particular projects.
 - (1). In general.
 - (2). Land use in general.
 - (3). Waters and water courses; dams and flood control.
 - (4). Electricity, generation and transmission; nuclear.
 - (5). Mining; oil and gas.
 - (6). Waste; hazardous materials.
 - (7). Surface transportation; highways and bridges.
 - (8). Aviation.
- 605. — Proceedings; certification and approval.

149E. ENVIRONMENTAL LAW

XII. ASSESSMENTS AND IMPACT STATEMENTS.(Cont'd)

- 606. Effect of statement or other requirements.
- 607. Effect of deficiency.
- 608. — In general.
- 609. — Lack of statement.
- 610. Time requirements.
- 611. Private right of action; citizen suits.
- 612. Evidence.
- 613. — In general.
- 614. — Presumptions, inferences, and burden of proof.
- 615. — Weight and sufficiency.

XIII. JUDICIAL REVIEW OR INTERVENTION.

- 621. In general.
- 622. Powers of courts.
- 623. Constitutional provisions, statutes, and ordinances.
- 624. — In general.
- 625. — Purpose.
- 626. — Validity.
- 627. — Construction.
- 628. — Retrospective application.
- 629. Concurrent and conflicting statutes or regulations.
- 630. — In general.
- 631. — Federal preemption.
- 632. — State preemption of local laws and actions.
- 633. Nature and form of remedy; applicable law.
- 634. Jurisdiction in general.
- 635. Venue.
- 636. Administrative decisions or actions reviewable in general.
- 637. — In general.
- 638. — Land use and conservation.
- 639. — Historical preservation.
- 640. — Water, wetlands, and waterfront conservation.
- 641. — Water pollution.
- 642. — Air pollution.
- 643. — Noise pollution.
- 644. — Waste disposal and management.
- 645. — Hazardous waste and materials.
- 646. — Radiation and nuclear materials.
- 647. — Plants and wildlife; endangered species.

XIII. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)

- 648. — Assessments and impact statements.
- 649. Persons entitled to sue or seek review; standing.
- 650. — In general.
- 651. — Cognizable interests and injuries, in general.
- 652. — Organizations, associations, and other groups.
- 653. — Corporations.
- 654. — Government entities, agencies, and officials.
- 655. — Wildlife and natural objects.
- 656. — Other particular parties.
- 657. Parties.
- 658. Conditions precedent in general.
- 659. Notice requirements.
- 660. Prematurity.
- 661. Finality.
- 662. Ripeness.
- 663. Mootness.
- 664. Primary jurisdiction.
- 665. Exhaustion of administrative remedies.
- 666. Preservation of error in administrative proceeding.
- 667. Record of administrative proceeding.
- 668. Time for proceedings.
- 669. — In general.
- 670. — Periods applicable.
- 671. — Accrual, computation, and tolling.
- 672. — Laches.
- 673. Pleading, petition, or application.
- 674. Process or notice.
- 675. Discovery.
- 676. Hearing or rehearing.
- 677. Scope of inquiry on review of administrative decision.
- 678. — In general.
- 679. — Land use and conservation.
- 680. — Historical preservation.
- 681. — Water, wetlands, and waterfront conservation.
- 682. — Water pollution.
- 683. — Air pollution.
- 684. — Noise pollution.
- 685. — Waste disposal and management.
- 686. — Hazardous waste and materials.

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XIII. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)

- 687. — Radiation and nuclear materials.
- 688. — Plants and wildlife; endangered species.
- 689. — Assessments and impact statements.
- 690. Harmless error.
- 691. Evidence in general.
- 692. Questions of law and fact.
- 693. Instructions.
- 694. Determination, judgment, and relief.
- 695. — In general.
- 696. — Dismissal.
- 697. — Stay of administrative order or proceedings.
- 698. — Remand to administrative agency.
- 699. Injunction.
- 700. — In general.
- 701. — Preliminary injunction.
- 702. Penalties.
- 703. Enforcement; contempt.
- 704. Further review of administrative decision.
- 705. — In general.
- 706. — Decisions reviewable and right of review.
- 707. — Preservation of error.
- 708. — Scope of review.
- 709. — Determination and relief.
- 711. Costs and attorney fees.
- 712. — In general.
- 713. — Land use and conservation.
- 714. — Historical preservation.
- 715. — Water, wetlands, and waterfront conservation.
- 716. — Water pollution.
- 717. — Air pollution.
- 718. — Noise pollution.
- 719. — Waste disposal and management.
- 720. — Hazardous waste or materials.
 - (1). In general.
 - (2). Response and cleanup actions.
- 721. — Radiation and nuclear materials.
- 722. — Plants and wildlife; endangered species.
- 723. — Assessments and impact statements.

XIV. CRIMINAL RESPONSIBILITY.

- 731. In general.
- 732. Statutes and ordinances.
- 733. — In general.
- 734. — Purpose.
- 735. — Validity.
- 736. — Construction.
- 737. — Retrospective application.
- 738. Offenses.
- 739. — In general.
- 740. — Land use and conservation.
- 741. — Historical preservation.
- 742. — Water, wetlands, and waterfront conservation.
- 743. — Water pollution.
- 744. — Air pollution.
- 745. — Noise pollution.
- 746. — Waste disposal and management.
- 747. — Hazardous waste and substances.
- 748. — Radiation and nuclear materials.
- 749. — Plants and wildlife; endangered species.
- 750. — Assessments and impact statements.
- 751. Prosecutions in general.
- 752. Indictment and information.
- 753. Evidence.
- 754. — In general.
- 755. — Presumptions, inferences, and burden of proof.
- 756. — Weight and sufficiency.
- 757. — Degree of proof.
- 758. Trial in general.
- 759. Questions of law and fact.
- 760. Instructions.
- 761. Sentence.
- 762. Penalties and fines and disposition thereof.

149T. EQUITABLE CONVERSION

SUBJECTS INCLUDED

Changes in the nature of property as real or personal for equitable purposes in the consideration of the law, whether actual, as by

149T. EQUITABLE CONVERSION

exercise of power of eminent domain, sale for partition, foreclosure, etc., investment of funds in land, etc., or constructive, as necessary to carry into effect directions or agreements contained in deeds, wills, settlements, contracts or other instruments in writing

Nature, requisites, incidents, operation and effect of such changes

Reconversion by act of the parties or by operation of law

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Changes in the nature of property as real or personal by means of physically attaching it to or severing it from other property, see PROPERTY ⇐5

Wrongful conversion of personal property, see CONVERSION AND CIVIL THEFT

100. In general; nature and grounds of doctrine.

101. What law governs.

102. Realty into personalty in general.

103. Exercise of power of eminent domain.

104. Sale of land under order of court.

105. — In general.

106. — Persons under disability.

107. — Extent of conversion.

108. — Time of conversion.

109. Conveyances and contracts.

110. — In general.

111. — Extent of conversion.

112. — Time of conversion.

113. Directions in will.

114. — In general.

115. — Sale for purpose of distribution.

116. — Void or lapsed bequests and failure of purpose of conversion.

117. — Actual sale under power.

118. — Subject to discretion or option.

(1). In general.

(2). Necessity of imperative direction to sell.

(3). Intention of testator.

(4). Sale necessary to fulfill purposes of will.

(5). Option of beneficiary.

(6). Discretion as to time and manner of sale.

119. — Subject to condition or contingency.

120. — Extent of conversion.

121. — Time of conversion.

(1). In general.

(2). Upon death of testator.

122. Personalty into realty.

123. Operation and effect.

124. — In general.

125. — Directions in will.

126. Reconversion.

127. — In general.

128. — Election of beneficiary.

129. — Mode and sufficiency of election.

150. EQUITY

SUBJECTS INCLUDED

Administration of equity as a distinct system of jurisprudence, either by separate courts of chancery or by other courts exercising chancery powers

Nature, grounds, limits and subjects of jurisdiction in equity in general

Principles and maxims of equity jurisprudence

Procedure peculiar to suits in equity, more particularly in states where this and other procedures have not been assimilated under codes and practice acts

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Appeals from decrees or orders in equity, see APPEAL AND ERROR, COURTS

Costs in equitable cases, see COSTS, FEDERAL CIVIL PROCEDURE

Courts of equity, organization and general conduct of business, see COURTS and FEDERAL COURTS

Distinction between legal and equitable causes of action, and equitable relief and equitable defenses at common law or under statutes abolishing such distinction, see ACTION, PLEADING and specific topics dealing with particular proceedings in actions

150. EQUITY

Particular equitable estates, rights and defenses, see ESTATES IN PROPERTY, ES-
TOPPEL, LIENS, MORTGAGES AND
DEEDS OF TRUST, TRUSTS, and other
specific topics

Particular equitable remedies, see AC-
COUNT, CANCELLATION OF INSTRU-
MENTS, INJUNCTION, SPECIFIC PER-
FORMANCE and other specific topics

Particular persons or property or estates
therein, equity jurisdiction and its exercise,
see INFANTS, PARTNERSHIP and other
specific topics

I. JURISDICTION, PRINCIPLES, AND MAXIMS, ¶1-66.

(A) NATURE, GROUNDS, SUBJECTS, AND EXTENT OF JURISDIC- TION IN GENERAL, ¶1-42.

(B) REMEDY AT LAW AND MULTI- PLICITY OF SUITS, ¶43-53.

(C) PRINCIPLES AND MAXIMS OF EQUITY, ¶54-66.

II. LACHES AND STALE DEMANDS, ¶67-88.

III. PARTIES AND PROCESS, ¶89-127.

IV. PLEADING, ¶128-335.

(A) ORIGINAL BILL, ¶128-153.

(B) PLEA, ANSWER, AND DISCLAIM- ER, ¶154-194.

(C) CROSS-BILL AND PLEA AND AN- SWER THERETO, ¶195-206.

(D) REPLICATION, ¶207-213.

(E) DEMURRER, EXCEPTIONS, AND MOTIONS, ¶214-264.

(F) AMENDED AND SUPPLEMENTAL PLEADINGS AND REVIVOR, ¶265-309.

(G) SIGNATURE, INDORSEMENT, VERIFICATION, FILING, AND SERVICE, ¶310-323.

(H) ISSUES, PROOF, AND VARIANCE, ¶324-327.

(I) DEFECTS AND OBJECTIONS, AND WAIVER THEREOF, ¶328-335.

V. EVIDENCE, ¶336-348.

VI. TAKING AND FILING PROOFS, ¶349-358.

VII. DISMISSAL BEFORE HEARING, ¶359-368.

VIII. HEARING, SUBMISSION OF IS- SUES TO JURY, AND REHEAR- ING, ¶369-392.

IX. MASTERS AND COMMISSIONERS, AND PROCEEDINGS BEFORE THEM, ¶393-414.

X. DECREE AND ENFORCEMENT THEREOF, ¶415-441.

XI. BILL OF REVIEW, ¶442-466.

I. JURISDICTION, PRINCIPLES, AND MAXIMS.

(A) NATURE, GROUNDS, SUBJECTS, AND EXTENT OF JURISDICTION IN GENERAL.

1. Nature and source of jurisdiction.
2. Constitutional and statutory provisions.
3. Grounds of jurisdiction in general.
4. Accident.
5. Mistake.
6. — In general.
7. — Of law.
8. — Of fact.
9. — Of expression.
10. Fraud.
11. — In general.
12. — Actual fraud.
13. — Inequitable or unconscionable transactions.
14. — As to third persons.
15. Subjects of jurisdiction in general.
16. Personal status and rights.
17. Property and rights therein in general.
18. Community or uncertainty of ownership or interest.
19. Equitable estates or interests.
20. Liens.
21. Fiduciary rights and obligations.
22. Administration of estates.
23. Contracts in general.
24. Penalties and forfeitures.
25. Illegal contracts, combinations, and trans-
actions.
26. Torts.
27. Crimes.
28. Criminal prosecutions.
29. Powers and acts of public officers.
31. Jurisdiction of the person.
32. Jurisdiction of property or other subject-
matter.
33. Amount or value in controversy.
34. Trivial matters.
35. Ancillary and incidental jurisdiction.
36. Exercise of jurisdiction beyond territorial
limits.
37. Retention of jurisdiction acquired.
38. — In general.

150. EQUITY

I. JURISDICTION, PRINCIPLES, AND MAXIMS.(Cont'd)

- 39. — Complete relief.
 - (1). In general.
 - (2). Legal relief in general.
 - (3). Damages.
 - (4). Relief to defendant.
 - 40. — Alternative legal relief.
 - 41. — Denial of equitable relief.
 - 42. Waiver of objections.
 - (1). In general.
 - (2). Failure to raise objection by pleading.
- (B) REMEDY AT LAW AND MULTIPLICITY OF SUITS.**
- 43. Existence of remedy at law and effect in general.
 - 44. Exclusive or concurrent jurisdiction.
 - 45. Adequacy of legal remedy.
 - 46. — In general.
 - 47. — Title to or possession of property.
 - (5). In general.
 - (1). Realty.
 - (2). Personalty.
 - 48. — Performance or breach of contract.
 - 49. Enlargement of legal remedy.
 - 50. Statutory creation of remedy.
 - 51. Multiplicity of suits.
 - (1). In general.
 - (2). What constitutes multiplicity in general.
 - (3). Contractual or property rights.
 - 52. Circuity of action.
 - 53. Waiver of objections.
 - (1). In general.
 - (2). Failure to plead objection.
 - (3). Dismissal on court's own motion.
 - (4). Objection at hearing or after decree.

(C) PRINCIPLES AND MAXIMS OF EQUITY.

- 54. Application and operation in general.
- 55. Equity suffers no right to be without a remedy.
- 56. Equity regards substance rather than form.
- 57. Equity regards that as done which ought to be done.
- 59. Equality is equity.

I. JURISDICTION, PRINCIPLES, AND MAXIMS.(Cont'd)

- 60. Where equities are equal, the first in time will prevail.
- 61. Where equities are equal, the law will prevail.
- 62. Equity follows the law.
- 63. Equity acts in personam, not in rem.
- 64. Equity aids the vigilant, not those who sleep on their rights.
- 65. He who comes into equity must come with clean hands.
 - (1). In general.
 - (2). Nature of unconscionable conduct.
 - (3). Conduct with respect to different transactions.
- 66. He who seeks equity must do equity.

II. LACHES AND STALE DEMANDS.

- 67. Nature and elements in general.
- 68. Grounds and essentials of bar.
- 69. — In general.
- 70. — Knowledge of facts.
- 71. — Lapse of time.
 - (1). In general.
 - (2). What constitutes unreasonable delay in general.
 - (3). Suits relating to title or possession of real estate.
 - (4). Acquiescence.
- 72. — Prejudice from delay in general.
 - (1). In general.
 - (2). Rights of third persons in general.
 - (3). Death of adverse party to original transaction.
 - (4). Change in value of property, expenditures, and improvements.
- 73. — Loss of evidence.
- 74. Excuses.
- 75. — In general.
- 76. — Personal disabilities.
- 77. — Pecuniary condition, insolvency, or bankruptcy.
- 78. — Absence or nonresidence.
- 79. — Negligence of attorney or other representative.
- 80. — Fraud, concealment, or other act of adverse party.

150. EQUITY

II. LACHES AND STALE DEMANDS.(Cont'd)

- 81. — Negotiations and agreements between parties.
- 82. — Pendency of legal proceedings.
- 83. — Recognition of right by adverse party.
- 84. Application of doctrine in general.
- 85. Rights of public.
- 86. Effect of possession of real property involved.
- 87. Following statute of limitations.
 - (1). In general.
 - (2). Delay short of statutory period.
 - (3). Loss of legal remedy by limitations.
- 88. Waiver of objections.

III. PARTIES AND PROCESS.

- 89. Parties in general.
- 89.1. — In general.
- 90. — Necessity and effect of interest.
- 91. — Nature and extent of interest.
- 92. — Persons joined for purpose of discovery.
- 93. Necessary or indispensable parties.
- 93.1. — In general.
- 94. — Persons indispensable to complete and final determination.
- 95. — Persons legally represented.
- 96. — Grounds for omitting or dispensing with parties.
- 97. — One or more suing or defending on behalf of all.
- 98. Proper parties.
- 98.1. — In general.
- 99. — Interest in controversy separable.
- 100. — Interest in subject-matter without interest in controversy.
- 101. — Dispensing with parties.
- 102. Complainants.
- 103. — In general.
- 104. — Real party in interest.
- 105. — Joinder.
- 106. Defendants.
- 107. — In general.
- 108. — Joinder.
- 109. Making party complainant or defendant.
- 110. — In general.

III. PARTIES AND PROCESS.(Cont'd)

- 111. — Party refusing to join as complainant.
- 112. — Change of position.
- 113. Parties to original suit as parties to ancillary suit.
- 114. Intervention.
- 115. Bringing in new parties.
- 116. Substitution.
- 117. Defects and objections as to parties.
- 118. Amendment as to parties.
- 119. Process in general.
- 120. Subpoena.
- 120.1. — In general.
- 121. — Nature and necessity.
- 122. — Issuance, form, and requisites.
- 123. — Service.
- 124. — Return.
- 125. — Defects, objections, and amendment.
- 126. Attachment against the person.
- 127. Appearance.

IV. PLEADING.

(A) ORIGINAL BILL.

- 128. Nature and office.
- 129. Form and requisites in general.
- 130. Title or caption.
- 131. Address or direction.
- 132. Introduction or statement as to parties.
- 133. Premises or statement of cause of action.
- 134. Confederating part.
- 135. Charging part.
- 136. Averment of jurisdiction.
- 137. Interrogating part.
- 138. Prayer for relief.
- 139. Prayer for process.
- 140. Interrogatories.
- 141. Form and sufficiency of allegations in general.
 - (1). In general.
 - (2). Title or interest of plaintiffs.
- 142. Directness and positiveness or argumentativeness.
- 143. Certainty.
- 144. Consistency, ambiguity, or repugnancy.
- 145. Double aspect.
- 146. Multifariousness.
- 147. — In general.

150. EQUITY

IV. PLEADING.(Cont'd)

- 148. — Misjoinder of causes of action.
 - (1). In general.
 - (2). Several grounds for single relief.
 - (3). Prayer for different kinds of relief in general.
 - (4). Legal and equitable demands.
 - (5). Injunction and other relief.
 - (6). Suit to reform, cancel, or set aside different instruments.
 - (7). Partition and other relief.
- 149. — Misjoinder of complainants.
- 150. — Misjoinder of defendants.
 - (5). In general.
 - (1). Common or distinct interests or liabilities in general.
 - (2). Separate acts or transactions affecting same property.
 - (3). Suit for mortgage foreclosure.
 - (4). Suits relating to administration of decedents' estates.
 - (5). Suit for partition and other relief.
 - (6). Suit to enforce creditors' claims.
 - (7). Several capacities of sole defendant.
- 151. Impertinence and scandal.
- 152. Exhibits.
- 153. Construction and operation.

(B) PLEA, ANSWER, AND DISCLAIMER.

- 154. Mode of pleading defenses.
- 155. Plea and answer to same bill.
- 156. Pleas.
 - 156.1. — In general.
- 157. — Nature and office.
- 158. — Necessity.
- 159. — Grounds in general.
- 160. — To the jurisdiction.
- 161. — To the person.
- 162. — To the bill.
- 163. — In bar of relief.
- 164. — In bar of discovery.
- 165. — Time for filing.
- 166. — Form and requisites.
- 167. — Sufficiency.
- 168. — Scope and extent.
- 169. — Answer in support of plea.
- 170. — Plea overruled by answer.
- 171. — Abandonment or withdrawal.

IV. PLEADING.(Cont'd)

- 172. — Admissions by plea.
- 173. — Setting down plea for hearing.
- 174. — Reference to master.
- 175. — Hearing and determination.
- 176. — Operation and effect of decision.
- 177. Answer.
 - 177.1. — In general.
- 178. — Nature and office.
- 179. — Necessity.
- 180. — Defenses in general.
- 181. — Time for filing.
- 182. — Form and requisites.
- 183. — Plea standing as answer.
- 184. — Sufficiency as defense in general.
- 185. — Scope and extent.
- 186. — Denials and admissions.
- 187. — Allegations of new matter.
- 188. — Necessity for discovery.
- 189. — Sufficiency of discovery in general.
- 190. — Responsiveness.
- 191. — Impertinence and scandal.
- 192. Disclaimer.
- 193. Attachment to compel answer.
- 194. Failure to answer.

(C) CROSS-BILL AND PLEA AND ANSWER THERETO.

- 195. Nature and office of cross-bill.
- 196. Necessity for cross-bill.
- 197. Right to file cross-bill.
- 198. Leave or direction of court to file cross-bill.
- 199. Jurisdiction of subject-matter.
- 200. Time for filing cross-bill.
- 201. Form and requisites of cross-bill.
- 202. Sufficiency of cross-bill.
- 203. Answer as cross-bill.
- 204. Parties and process.
- 205. Plea.
- 206. Answer.

(D) REPLICATION.

- 207. Nature and office.
- 208. Necessity.
- 209. Right to reply.
- 210. Time for filing.
- 211. Form and requisites.

150. EQUITY

IV. PLEADING.(Cont'd)

- 212. Sufficiency.
- 213. Failure to reply.
- (E) DEMURRER, EXCEPTIONS, AND MOTIONS.**
- 214. Mode of making objections to pleading.
- 215. Demurrer and plea or answer to same bill.
- 216. Nature and office of demurrer.
- 217. Necessity of demurrer.
- 218. Grounds for demurrer to bill.
- 219. — In general.
- 220. — Objections to jurisdiction.
- 221. — Objections to person of complainant.
- 222. — Objections to form or frame of bill.
- 223. — Objections to substance of bill.
- 224. — Objections to discovery.
- 225. Right to demur.
- 226. Joint demurrers.
- 227. Time for filing demurrer.
- 228. Form and requisites of demurrer.
- 229. Demurrer incorporated in answer.
- 230. Sufficiency of demurrer.
- 231. Scope and extent of demurrer in general.
- 232. Demurrer to bill good in part.
- 233. General demurrer.
- 234. Special demurrer.
- 235. Speaking demurrer.
- 236. Demurrer ore tenus.
- 237. Demurrer overruled by plea or answer.
- 238. Abandonment or withdrawal of demurrer.
- 239. Admissions by demurrer.
- 240. Setting down demurrer for hearing.
- 241. Hearing and determination on demurrer.
- 242. Operation and effect of decision on demurrer.
- 242.1. — In general.
- 243. — Overruling demurrer.
- 244. — Answer after demurrer overruled.
- 245. — Sustaining demurrer to bill.
- 246. — Sustaining demurrer as to part of bill.
- 247. — Amendment after demurrer sustained.
- 248. Failure to demur.
- 249. Nature and office of exceptions.

IV. PLEADING.(Cont'd)

- 250. Necessity of exceptions.
- 251. Grounds for exceptions to answer.
- 251.1. — In general.
- 252. — Insufficiency.
- 253. — Impertinence or scandal.
- 254. Time for filing exceptions.
- 255. Form and requisites of exceptions.
- 255.5. Withdrawal or waiver of exceptions.
- 256. Reference of exceptions to master.
- 257. Hearing and determination on exceptions.
- 258. Operation and effect of decision on exceptions.
- 259. Further answer after exceptions sustained.
- 260. Failure to except.
- 261. Motions relating to pleadings.
- 262. — In general.
- 263. — Striking out pleading.
- 264. — Striking out part of pleading.
- (F) AMENDED AND SUPPLEMENTAL PLEADINGS AND REVIVOR.**
- 265. Right to amend pleadings in general.
- 266. Amendment as of course.
- 267. Discretion of court as to amendment.
- 268. Amendment of bill.
- 269. — In general.
- 270. — Sworn bill.
- 271. — Condition of cause.
- 272. — Matter arising after filing of bill.
- 273. — Matter making new case.
- 274. — As to relief prayed.
- 275. — Operation and effect in general.
- 276. — Plea or answer to amended bill.
- 277. — Demurrer to amended bill.
- 278. Amendment of plea or answer.
- 279. — In general.
- 280. — Sworn plea or answer.
- 281. — Condition of cause.
- 282. — Matter arising after pleading.
- 283. — Matter making new defense.
- 284. — Operation and effect in general.
- 285. — Exceptions to amended answer.
- 286. Amendment of cross-bill.
- 287. Amendment of demurrer.
- 288. Amendment to conform to proofs.
- 289. Amendment on court's own motion.

150. EQUITY

IV. PLEADING.(Cont'd)

- 290. Application for leave to amend, and determination thereon.
- 291. Conditions on amendment.
- 292. Mode of making amendment.
- 293. Form and sufficiency of amended pleading.
- 294. Supplemental bill or cross-bill.
- 294.1. — In general.
- 295. — Nature and office.
- 296. — Grounds.
- 297. — Leave of court.
- 298. — Form and sufficiency.
- 299. — Construction and operation.
- 300. — Plea and answer.
- 301. — Demurrer.
- 302. Further or additional answer.
- 303. Bill of revivor.
- 303.1. — In general.
- 304. — Nature and office.
- 305. — Grounds.
- 306. — Form and sufficiency.
- 307. — Construction and operation.
- 308. — Plea and answer.
- 309. — Demurrer.

(G) SIGNATURE, INDORSEMENT, VERIFICATION, FILING, AND SERVICE.

- 310. Signature of party.
- 311. Signature and certificate of counsel.
- 311.5. Indorsements.
- 312. Necessity of verification.
- 312.1. — In general.
- 313. — Of bill.
- 314. — Of plea.
- 315. — Of answer in general.
- 316. — Waiver by bill of answer under oath.
- 317. — Of replication.
- 318. — Of amended pleadings.
- 319. Sufficiency of verification.
- 320. Affidavit and certificate accompanying plea or demurrer.
- 321. Filing and notice thereof.
- 322. Service.
- 323. Withdrawal of pleadings.

(H) ISSUES, PROOF, AND VARIANCE.

- 324. Issues in general.

IV. PLEADING.(Cont'd)

- 325. Matters to be proved.
- 326. Evidence admissible under pleadings.
- 327. Variance between allegations and proof.

(I) DEFECTS AND OBJECTIONS, AND WAIVER THEREOF.

- 328. Defects and objections which may be cured or waived.
- 329. Cure by subsequent pleading.
- 330. Waiver of objections to pleadings in general.
 - (1). In general.
 - (2). Multifariousness.
- 331. Objections to rulings on demurrer, exceptions, or motions.
- 332. Objections to amendments.
- 333. Want of signature, certificate of counsel, or verification.
- 334. Objections to evidence as not within issues.
- 335. Objections on ground of variance.

V. EVIDENCE.

- 336. Rules of evidence and mode of proof in general.
- 337. Pleadings as evidence in general.
- 338. Answer as evidence.
- 339. — In general.
- 340. — Responsiveness.
- 341. — Directness and positiveness.
- 342. — Answer not under oath.
- 343. — Waiver of answer under oath.
- 344. — For or against codefendant.
- 345. — Evidence to overcome answer.
- 346. Presumptions and burden of proof.
- 347. Admissibility.
- 348. Weight and sufficiency.

VI. TAKING AND FILING PROOFS.

- 349. Taking in general.
- 350. Time for taking.
- 351. Examination of witnesses.
- 352. — In general.
- 353. — Cross-examination and re-examination.
- 354. — Privilege of witness.
- 354.5. Production of documents.
- 355. Depositions.
- 356. Filing proofs.

150. EQUITY

VI. TAKING AND FILING PROOFS.(Cont'd)

- 357. Publication.
- 358. Objections to evidence.

VII. DISMISSAL BEFORE HEARING.

- 359. Voluntary dismissal.
- 360. Involuntary dismissal.
- 361. — In general.
- 362. — Grounds.
- 363. — Motion and determination thereof.
- 364. — Dismissal on court's own motion.
- 365. — Dismissal without prejudice.
- 366. — Conditions.
- 367. — Operation and effect.
- 368. Setting aside, and reinstatement of cause.

VIII. HEARING, SUBMISSION OF ISSUES TO JURY, AND REHEARING.

- 369. Condition of cause.
- 370. Hearing of causes together.
- 371. Separate hearings in same cause.
- 372. Setting down cause for hearing.
- 373. Hearing on bill and answer.
- 374. Notice of hearing and preliminary proceedings.
- 375. Continuance.
- 376. Submission of issues to jury.
- 377. — In general.
- 378. — Issues proper for jury.
- 379. — Proceedings for award and framing of issues.
- 380. — Proceedings at trial.
- 381. — Verdict and findings.
- 382. — New trial.
- 383. Direction of action at law.
- 384. Conduct of hearing in general.
- 385. Reception of evidence.
- 386. Arguments of counsel and briefs.
- 387. Submission of cause.
- 388. Dismissal at final hearing.
- 389. Decision.
- 390. Objections and exceptions.
- 391. Waiver and correction of irregularities and errors.
- 392. Rehearing.

IX. MASTERS AND COMMISSIONERS, AND PROCEEDINGS BEFORE THEM.

- 393. Appointment, qualification, and tenure.
- 394. Compensation and fees.
- 395. Powers and functions in general.
- 396. Liabilities for official acts.
- 397. Liabilities for misconduct or negligence.
- 398. Liabilities on official bond.
- 399. Power to refer.
- 400. Discretion as to reference.
- 401. Questions and matters proper for reference.
- 402. Application for reference and proceedings thereon.
- 403. Order of reference.
- 404. Evidence on reference.
- 405. Hearing.
 - (1). In general.
 - (2). Reopening case.
- 406. Report.
 - 406.1. — In general.
- 407. — Form and sufficiency in general.
- 408. — Return of evidence.
- 409. — Operation and effect.
- 410. Objections and exceptions to report and hearing thereof.
 - (.5). In general.
 - (1). Necessity of objection and exception.
 - (2). Time for objecting and excepting.
 - (3). Right to except and waiver thereof.
 - (4). Form and sufficiency of exceptions.
 - (5). Grounds.
 - (6). Purpose and scope of exceptions.
 - (7). Hearing.
- 411. Disposition of report in general.
- 412. Recommittal.
- 413. Confirmation of report.
- 414. Setting aside report.

X. DECREE AND ENFORCEMENT THEREOF.

- 415. Nature and essentials in general.
- 416. Decree on consent.
- 417. Decree pro confesso.
 - 417.1. — In general.
- 418. — Requisites and validity.
- 419. — Opening or setting aside.

150. EQUITY

X. DECREE AND ENFORCEMENT THEREOF.(Cont'd)

- 420. — Effect.
- 421. Interlocutory decree.
- 422. Final decree.
- 423. Nature and extent of relief in general.
- 424. Incidental or alternative relief.
- 425. Denial of relief.
- 426. Relief to defendant.
- 427. Conformity to pleadings, proofs, and findings.
 - (1). In general.
 - (2). Conformity to prayer.
 - (3). Relief under prayer for general relief.
- 428. Entry and record.
- 429. Amendment or modification.
- 430. Opening or vacating.
 - (1). In general.
 - (2). Grounds.
 - (3). Parties and proceedings.
- 431. Construction and operation.
- 432. Performance and satisfaction.
- 433. — In general.
- 434. — Payment of money.
- 435. — Performance of specific act.
- 436. — Execution of written instrument.
- 437. Enforcement in general.
- 438. Execution.
- 439. Attachment against the person.
- 440. Sequestration.
- 441. Bill to enforce decree.

XI. BILL OF REVIEW.

- 442. Nature and scope of remedy.
- 443. Decrees revicwable.
- 444. Grounds.
- 445. — In general.
- 446. — Errors and irregularities.
- 447. — New matter.
 - (1). In general.
 - (2). Materiality and effect of new evidence.
 - (3). Cumulative evidence.
 - (4). Diligence.
- 448. Conditions precedent.
- 449. Defenses.
- 450. Right of review.
- 451. Jurisdiction.

XI. BILL OF REVIEW.(Cont'd)

- 452. Limitations and laches.
- 453. Leave to file bill.
- 453.1. — In general.
- 454. — Necessity.
- 455. — Discretion of court.
- 456. — Application and proceedings thereon.
- 457. Parties.
- 458. Process.
- 459. Stay of proceedings under former decree.
- 460. Form and sufficiency.
- 461. Plea and answer.
- 462. Demurrer to bill.
- 463. Evidence.
- 464. Hearing and determination.
- 465. Decree.
- 466. Operation and effect of reversal of former decree.

151. ESCAPE

SUBJECTS INCLUDED

Voluntary departure and attempts of prisoners to depart from lawful custody of officers or other persons, or from any place where they are lawfully confined, with or without force or fraud

Voluntary or negligent allowance by officers of such departure, aiding such escape, and concealing or harboring escaped prisoners, as offenses

Nature and elements of the crimes of escape, jail breaking, prison breach, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arrest, resisting or obstructing, see OBSTRUCTING JUSTICE

Delivery of prisoners from custody by others, see RESCUE

154. ESTATES IN PROPERTY

Officers' civil liabilities for permitting escape, see PUBLIC EMPLOYMENT, SHERIFFS AND CONSTABLES and other specific topics

1. Nature and elements of offenses in general.
2. Escape by prisoners without force.
3. Escape suffered by officer.
4. Prison breach or jail breaking.
5. Aiding escape.
- 5.5. Attempts.
6. Defenses.
7. Persons liable.
9. Indictment or information.
10. Evidence.
11. Trial.
13. Sentence and punishment.

152. ESCHEAT

SUBJECTS INCLUDED

Reversion of property, real or personal, to the state, for want of persons legally competent to hold or take it, or as being abandoned property or bona vacantia

Conveyance, release and enforcement of the rights of the state

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Disabilities to inherit, etc., of particular classes of persons, see ALIENS, IMMIGRATION, AND CITIZENSHIP, DESCENT AND DISTRIBUTION II(C), PARENT AND CHILD ¶102

1. Nature in general.
2. Constitutional and statutory provisions.
3. Property subject to escheat.
4. Grounds.
5. Release.
6. Enforcement.
7. Operation and effect.
8. Disposition of property escheated.
 - (1). In general.

- (2). Recovery of proceeds of escheated property.

154. ESTATES IN PROPERTY

SUBJECTS INCLUDED

Nature and incidents of interests in real or personal property in general, and of estates in fee or in absolute ownership

Union or merger of estates

Estates tail

Ground rents

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Creation and transfer of estates, see DEEDS, WILLS, DESCENT AND DISTRIBUTION and other specific topics

Decedents' estates, see EXECUTORS AND ADMINISTRATORS

Joint or common estates, see JOINT TENANCY, TENANCY IN COMMON

Particular estates less than the fee, see LIFE ESTATES, LANDLORD AND TENANT, REVERSIONS, REMAINDERS, TRUSTS

Condominiums and other common interest communities, see COMMON INTEREST COMMUNITIES

1. Nature and incidents in general.

Interests in common interest communities, see COMMON INTEREST COMMUNITIES.
2. Constitutional and statutory provisions.
3. Absolute ownership in general.
4. Estates of freehold.
5. Fee simple.
6. Base or qualified fee.
7. Conditional fee.
8. Rule in Shelley's Case.
9. Rent charge estates.
10. Merger.
 - (1). In general.
 - (2). Equitable and legal estates.
 - (3). Life estates in general and fee.
 - (4). Dower and fee.

154. ESTATES IN PROPERTY

12. Estates tail.
13. Ground rents.

156. ESTOPPEL

SUBJECTS INCLUDED

Preclusion of persons from asserting or denying matters of fact, rights or claims contrary to or inconsistent with previous allegations, admissions, denials, acts or conduct of the same persons or those under whom they claim

Nature and grounds of such preclusion, and waiver in general

Operation and effect of estoppel as to rights and titles subsequently acquired as well as those previously existing

Pleading estoppel and evidence relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Judgment, conclusiveness and effect, though described as estoppel by verdict or collateral estoppel, see JUDGMENT

Particular classes of persons, liability to be estopped, see INFANTS and other specific topics

Particular rights and defenses, estoppel to assert because of facts peculiar to circumstances under which such rights and defenses arise, see LANDLORD AND TENANT, LIMITATION OF ACTIONS, INSURANCE and other specific topics

Waiver of particular rights, see CONTRACTS and other specific topics

I. BY RECORD, ¶¶1-11.

II. BY DEED, ¶¶12-51.

(A) CREATION AND OPERATION IN GENERAL, ¶¶12-34.

(B) ESTATES AND RIGHTS SUBSEQUENTLY ACQUIRED, ¶¶35-51.

III. EQUITABLE ESTOPPEL, ¶¶52-121.

(A) NATURE AND ESSENTIALS IN GENERAL, ¶¶52-62.8.

(B) GROUNDS OF ESTOPPEL, ¶¶63-96.

III. EQUITABLE ESTOPPEL—Cont'd

- (C) PERSONS AFFECTED, ¶¶97-98.
- (D) MATTERS PRECLUDED, ¶¶99-106.
- (E) PLEADING, ¶¶107-115.
- (F) EVIDENCE, ¶¶116-118.
- (G) TRIAL, ¶¶119-121.

I. BY RECORD.

1. Nature and elements in general.
2. Judicial records in general.
3. Pleadings.
 - (1). In general.
 - (2). Declaration, complaint, petition or bill.
 - (3). Plea, answer, or cross-bill.
4. Petitions and affidavits.
5. Stipulations and admissions.
6. Motions and orders.
7. Verdicts and findings.
8. Persons to whom estoppel is available.
9. Persons estopped.
10. Matters precluded.
11. Pleading estoppel.

II. BY DEED.

(A) CREATION AND OPERATION IN GENERAL.

12. Nature and elements in general.
13. Instruments operating as estoppel.
14. — In general.
15. — Deeds.
16. — Bills of sale.
17. — Mortgages.
18. — Bonds and other obligations.
19. — Defective, inoperative, or invalid instruments and transactions.
20. Grounds of estoppel.
21. — In general.
22. — Recitals.
 - (1). In general.
 - (2). In deeds and mortgages.
 - (3). In bonds.
23. — Covenants.
24. Operation and effect in general.
25. Persons to whom estoppel is available.
26. Persons estopped in general.
27. Grantors or mortgagors and privies.
 - (1). In general.
 - (2). Privies.
28. Effect, as against heir, devisee, or donee, of covenant of ancestor or donor.

156. ESTOPPEL

II. BY DEED.(Cont'd)

- 29. Grantees.
- 29.1. Mortgages.
- 30. Remote grantees.
- 31. Persons acting in particular character or capacity.
- 32. Matters precluded.
 - (.5). In general.
 - (1). By deed.
 - (2). By lease.
 - (3). By mortgage or trust deed.
 - (4). By bond.
- 33. Estoppel against estoppel.
- 34. Pleading estoppel.

(B) ESTATES AND RIGHTS SUBSEQUENTLY ACQUIRED.

- 35. Estoppel as to title subsequently acquired in general.
- 36. Instruments operating on title subsequently acquired.
- 37. — In general.
- 38. — Conveyances with covenants.
- 39. — Conveyances without covenants.
- 40. Grounds of estoppel.
- 41. — In general.
- 42. — Liability on covenants.
- 43. Persons to whom estoppel is available.
- 44. Persons estopped in general.
- 45. Grantors or mortgagors and privies.
- 46. Estates or rights affected.
- 47. — In general.
- 48. — Title acquired from or adversely to grantee.
- 49. — Title acquired in different right.
- 50. Actual transfer of title by operation of law.
- 51. Pleading title by estoppel.

III. EQUITABLE ESTOPPEL.

(A) NATURE AND ESSENTIALS IN GENERAL.

- 52. Nature and application of estoppel in pais.
 - (1). In general.
 - (2). Basis of estoppel.
 - (3). Estoppel by conduct.
 - (4). When estoppel arises.
 - (5). Application in general.
 - (6). Doctrine not favored.

III. EQUITABLE ESTOPPEL.(Cont'd)

- (7). Effect of estoppel.
- (8). Particular applications.
- 52.5. What law governs.
- 52.10. Waiver distinguished.
 - (1). In general.
 - (2). Nature and elements of waiver.
 - (3). Implied waiver and conduct constituting waiver.
 - (4). Rights subject to waiver.
- 52.15. Essential elements.
- 53. Intent.
- 54. Knowledge of facts.
- 55. Reliance on adverse party.
- 56. Acts done or omitted, and change of position.
- 57. Benefit to person against whom estoppel is asserted.
- 58. Prejudice to person setting up estoppel.
- 59. Default or wrongful act of person setting up estoppel.
- 60. Certainty as to grounds.
- 61. Estoppel against estoppel.
- 62. Estoppel against public, government, or public officers.
 - 62.1. — In general.
 - 62.2. — States and United States.
 - (.5). In general.
 - (1). State government, officers, and agencies in general.
 - (2). Particular state officers, agencies or proceedings.
 - (3). United States government, officers, and agencies in general.
 - (4). Particular United States officers, agencies, or proceedings.
 - 62.3. — Counties and subdivisions thereof.
 - 62.4. — Municipal corporations in general.
 - 62.5. — Acts of officers or boards.
 - 62.6. — Contracts.
 - 62.7. — Admissions.
 - 62.8. — Acquiescence.

(B) GROUNDS OF ESTOPPEL.

- 63. Inconsistency of conduct and claims in general.
- 64. Assumption of capacity or authority.
- 65. Assertion of title or right in general.
- 66. Possession or acts of ownership under title or claim.

156. ESTOPPEL

III. EQUITABLE ESTOPPEL.(Cont'd)

- 67. Claim under written instrument.
- 68. Claim or position in judicial proceedings.
 - (1). In general.
 - (2). Claim inconsistent with previous claim or position in general.
 - (3). Claim inconsistent with contract or title previously asserted.
 - (4). Defense or objection inconsistent with previous claim or position in general.
 - (5). Position inconsistent with previous assertion of title in another in general.
 - (6). By levy of attachment, execution, or garnishment.
- 69. Testimony as witness.
- 70. Failure to assert title or right.
 - (.5). In general.
 - (1). Failure to assert title.
 - (2). Failure to assert claim.
 - (3). Failure to assert mortgage or other lien.
- 71. Disclaimer.
- 72. Acts making injury possible as between actor and another equally blameless.
- 73. Clothing another with apparent title or authority.
- 73.1. — In general.
- 74. — Real property.
 - (1). In general.
 - (2). Conveying or procuring conveyance to another.
 - (3). Release of interest.
 - (4). Placing another in possession.
- 75. — Personal property.
- 76. — Relying and acting on apparent title or authority.
- 77. Dealing with person asserting title or exercising authority.
- 78. Contracts.
 - (1). In general.
 - (2). Recital or recognition of rights or facts.
 - (3). Contracts relating to real estate.
 - (4). Promises to assume liability.
 - (5). Agreements to accept payment or reimbursement.
 - (6). Relying or acting on contract.

III. EQUITABLE ESTOPPEL.(Cont'd)

- 79. Stipulations and consents in judicial proceedings.
- 80. Official certificates or acts.
- 81. Requests.
- 82. Representations.
- 83. — In general.
 - (1). In general.
 - (2). Ownership of property.
 - (3). Existence and extent of liens and claims.
 - (4). Existence of roads, streets, and alleys.
 - (5). Validity and terms of contracts and conveyances.
 - (6). As to financial standing.
- 84. — Matters of fact or of opinion.
- 85. — Future events; promissory estoppel.
- 86. — Validity of bills or notes.
- 87. — Relying and acting on representations.
- 88. Admissions and receipts.
 - (1). In general.
 - (2). Relying or acting on admission.
 - (3). Receipts.
- 89. Acquiescence.
- 89.1. — In general.
- 90. — Assent to or ratification of acts of others in general.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Accounts or settlements.
 - (4). Acquiescence in use or obstruction of water course.
 - (5). Participation in elections.
 - (6). Acquiescence of stockholders and creditors in acts of corporation.
- 91. — Assent to or participation in judicial proceedings.
 - (1). In general.
 - (2). Partition proceedings.
 - (3). Compromises.
- 92. — Acceptance of benefits.
 - (1). In general.
 - (2). Contracts.
 - (3). Sale and conveyance or mortgage of property.
 - (4). Compensation for taking land for public use.

157. EVIDENCE

III. EQUITABLE ESTOPPEL.(Cont'd)

93. — Permitting improvements or expenditures.
- (1). In general.
 - (2). Erection of buildings.
 - (3). Building of dams.
 - (4). Construction of railroad.
 - (5). Improvements and expenditures by purchasers of land.
 - (6). Improvements and expenditures by purchasers at judicial sale.
 - (7). Acquiescence in use, obstruction, or diversion of water.
 - (8). Knowledge of facts.
94. — Permitting sale or mortgage of property.
- (1). In general.
 - (2). Public or judicial sale.
95. Silence.
96. Negligence.

(C) PERSONS AFFECTED.

97. Persons to whom estoppel is available.
98. *Persons estopped.*
- (1). In general.
 - (2). Purchasers from person creating estoppel.
 - (3). Heirs or executor of person creating estoppel.
 - (4). Creditors of person creating estoppel.

(D) MATTERS PRECLUDED.

99. Extent of estoppel in general.
100. Personal status or rights.
101. Title or claim to property.
102. Rights and liabilities under contracts.
103. Remedies.
104. Rights, remedies, or objections regarded as waived.
105. Matters adjudicated.
106. Availability at law.

(E) PLEADING.

107. Pleading as element of cause of action.
108. Demurrer raising defense.
109. Pleading as defense.
- 109.1. — In general.
110. — Necessity.

III. EQUITABLE ESTOPPEL.(Cont'd)

111. — Mode and form of plea or answer.
112. — Sufficiency of allegations.
113. — Reply or demurrer to plea or answer.
114. Pleading in avoidance of defense.
115. Issues, proof, and variance.

(F) EVIDENCE.

116. Presumptions and burden of proof.
117. Admissibility of evidence.
118. Weight and sufficiency of evidence.

(G) TRIAL.

119. Questions for jury.
120. Instructions.
121. Verdict, findings, and judgment.

157. EVIDENCE

SUBJECTS INCLUDED

Means of ascertaining the truth respecting matters of fact in issue in civil actions and proceedings in general

Admissibility for that purpose of relevant facts, statements, oral or written, opinions, character, reputation, etc.

Modes of proof and production of evidence other than testimony of witnesses, particularly documentary evidence, and exclusion of oral by documentary evidence

Burden of making proof, and operation of presumptions

Sufficiency and effect of evidence in civil cases in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Acknowledgment and record of written instruments, see **ACKNOWLEDGMENT, RECORDS**

Administrative proceedings, evidence in, see **ADMINISTRATIVE LAW AND PROCEDURE**, and other specific topics

Criminal prosecutions, evidence in, see **CRIMINAL LAW**

157. EVIDENCE

Discovery of evidence, see PRETRIAL PROCEDURE, FEDERAL CIVIL PROCEDURE

Estoppel to assert, prove or deny facts, see ESTOPPEL

Fact questions, province of court and jury, see TRIAL and other specific topics

Instructions on evidence, see TRIAL and other specific topics

Particular forms of action or special proceedings and particular systems of jurisprudence, rules of evidence peculiar to, see ADMIRALTY, BANKRUPTCY, EQUITY, HABEAS CORPUS, MANDAMUS and other specific topics

Pleadings, admissibility of evidence as dependent on, and what constitutes variance and its effect, see PLEADING and other specific topics

Reception of evidence, practice in, see TRIAL, REFERENCE, FEDERAL CIVIL PROCEDURE

Relevancy and sufficiency of evidence of particular matters, causes of action, etc., provided for by separate topics, see ADVERSE POSSESSION, CONTRACTS, NEGLIGENCE and other specific topics

Witnesses, including their competency, attendance, production of documents, examination and credibility, see WITNESSES

Written testimony, taking and use of, see AFFIDAVITS, PRETRIAL PROCEDURE

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II. PRESUMPTIONS, ¶53-89.

III. BURDEN OF PROOF, ¶90-98.

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(A) FACTS IN ISSUE AND RELEVANT TO ISSUES, ¶99-117.

(B) RES GESTAE; EXCITED UTTERANCES, ¶118-128.

(C) SIMILAR FACTS AND TRANSACTIONS, ¶129-142.

(D) MATERIALITY, ¶143-147.

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(A) NATURE, FORM, AND INCIDENTS IN GENERAL, ¶200-220.

VII. ADMISSIONS—Cont'd

(B) BY PARTIES OR OTHERS INTERESTED IN EVENT, ¶221-228.

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I. JUDICIAL NOTICE.

1. Nature and scope in general.
2. Grounds.
3. — In general.
4. — Universal recognition or notoriety.
5. Matters of common knowledge in general.
 - (1). In general.
 - (2). Particular facts.
6. Course and laws of nature.
7. Qualities and properties of matter.
8. Operation and effect of natural forces.
9. Scientific facts and principles.
10. Geographical facts.
 - (1). In general.
 - (2). Location of cities, towns, and villages.
 - (3). Location of streets, blocks, and lots, and street numbers.
 - (4). Location and boundaries of states, counties, and townships.
 - (5). Lakes, streams, and mountains, and navigability of waters.
 - (6). Distances between places.
11. Historical facts.
12. Statistical facts.
13. Phenomena of animal and vegetable life.
14. Facts relating to human life, health, habits, and acts.
15. Personal status and conditions.
16. Language, words and phrases, and abbreviations.
17. Time, days, and dates.
18. Weights, measures, and values.
19. Matters of art and skill.
20. Management and conduct of occupations.
 - (1). In general.
 - (2). Banks, carriers, telegraphs, and telephones.

I. JUDICIAL NOTICE.(Cont'd)

21. Customs and usages.
22. Corporations and associations and members thereof.
 - (1). In general.
 - (2). Powers and acts thereof.
 - (3). Location of railroads.
23. Matters relating to government and its administration in general.
 - (1). In general.
 - (2). Public surveys.
24. Nature and constitution of government.
25. Political divisions and bodies.
 - (.5). In general.
 - (1). Counties and county seats.
 - (2). Cities, towns, villages, and school districts.
 - (3). Township organization.
 - (4). District of Columbia.
26. Foreign governments.
27. Laws of the state.
28. — In general.
29. — Public statutes.
30. — Private statutes.
31. — Charters of public and private corporations.
32. — Municipal and county ordinances.
33. — Legislative proceedings and journals.
34. Laws of United States.
35. Laws of other states.
36. Laws and customs of Indians.
37. Laws of foreign countries.
38. International law.
39. Treaties.
40. Jurisdiction and powers of courts.
41. Existence, organization, and terms of courts.
42. Rules and procedure of courts.
43. Judicial proceedings and records.
 - (1). In general.
 - (2). Records or decisions in same case.
 - (3). Records and decisions in other actions or proceedings.
 - (4). Proceedings in other courts.
44. Officers and official position and authority.
45. Elections and appointments to office.
46. Official proclamations and orders.

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I. JUDICIAL NOTICE.(Cont'd)

47. Administrative rules and regulations.
48. Official proceedings and acts.
49. Official signatures and seals.
50. Public institutions.
51. Mode of ascertaining facts required to be noticed; motions and notice of reliance.
52. Effect of judicial notice.

II. PRESUMPTIONS.

53. Nature and scope in general.
54. Grounds.
55. Identity of persons and things.
56. Personal status and condition in general.
57. Nature and condition of property or other subject-matter.
58. Health and physical condition.
59. Love of life and avoidance of danger.
60. Innocence; legality.
61. Character.
62. Mental capacity in general.
63. Sanity.
64. Intent.
65. Knowledge of law.
66. Knowledge of fact.
67. Continuance of fact or condition.
 - (1). In general.
 - (2). Sanity or insanity.
 - (3). Existence of fact or condition prior to time shown.
 - (4). Continuance of law shown to exist.
68. Consequences of acts or states of fact.
69. Regularity of course of business or conduct of affairs.
70. Making, validity, and genuineness of writings.
71. Mailing, and delivery of mail matter.
72. Sending and delivery of e-mail, telegrams, and other messages.
73. Corporate acts and records.
74. Evidence withheld or falsified.
75. — In general.
76. — Failure of party to testify or giving evasive answers.
77. — Failure to call witness.
 - (1). In general.

II. PRESUMPTIONS.(Cont'd)

- (2). Effort made to procure witness not present.
- (3). Witnesses equally within reach of the parties in general.
- (4). Witnesses related to party failing to call them.
- (5). Witnesses presently or formerly employed by parties failing to call them.
- (6). Attorneys or physicians as witnesses.
78. — Suppression or spoliation of evidence.
79. — Fabrication of evidence.
80. Laws of other states.
 - (1). In general.
 - (2). Common law.
81. Laws of foreign countries.
82. Judicial proceedings.
83. Official proceedings and acts.
 - (1). In general.
 - (2). Of municipalities and officers in general.
 - (3). Of officers in land department of state or federal government.
 - (4). Of counties and officers thereof in general.
 - (5). Of notaries.
 - (6). Of clerks of courts.
 - (7). Of sheriffs and constables.
84. Particular facts.
85. Operation and effect.
 - 85.1. — In general.
86. — Presumptions of law.
87. — Presumptions of fact.
88. Conflicting presumptions of fact.
89. Rebuttal of presumptions of fact.

III. BURDEN OF PROOF.

90. Nature and scope in general.
91. Party asserting or denying existence of facts.
92. Proof of negative.
93. Facts within knowledge of adverse party.
94. Extent of burden in general.
95. Elements of cause of action or claim.
96. Matters of defense and rebuttal.
 - (1). In general.

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III. BURDEN OF PROOF.(Cont'd)

- (2). Matters of set-off, counterclaim, or reconvention.
- 97. Particular facts or issues.
- 98. Failure to sustain burden.

IV. ADMISSIBILITY IN GENERAL.

(A) FACTS IN ISSUE AND RELEVANT TO ISSUES.

- 99. Relevancy in general.
- 100. Circumstantial evidence of facts in issue.
- 101. What law governs.
- 102. Identity of persons and things.
- 103. Personal status and condition.
- 104. Personal relations.
- 105. Nature and condition of property or other subject-matter.
- 106. Character or reputation.
 - (1). In general.
 - (2). Honesty and integrity.
 - (3). Temper.
 - (4). Chastity and temperance.
 - (5). Right to prove specific facts.
- 107. Pecuniary condition.
- 108. Motive and intent.
- 109. Knowledge.
- 110. Statements and conduct of parties.
- 111. Customs and course of business.
- 112. Value of services.
- 113. Value or market price of property.
 - (1). In general.
 - (2). Time and place of valuation.
 - (3). Appraisal of property.
 - (4). Corporate stock and bonds.
 - (5). Comparison with other property and other interests in same property.
 - (6). Value of lease.
 - (7). Growing crops and grain.
 - (8). Cost of property and amount received in general.
 - (9). Cost of production.
 - (10). Cost of repairing, improving, or replacing property.
 - (11). Value of rents and profits as showing value of property.
 - (12). Decrease in rents and profits as showing damage to property.
 - (13). Insurance.
 - (14). Auction or judicial sale.

IV. ADMISSIBILITY IN GENERAL.(Cont'd)

- (15). Amount for which property can be purchased.
 - (16). Amount for which property will sell; offers.
 - (17). Amount offered for a portion of property.
 - (18). Amount offered for use of property.
 - (19). Tax assessment.
 - (20). Exchange value.
 - (21). Circumstances adding to or deducting from value in general.
 - (22). Animals.
 - 114. Facts relevant to particular issues.
 - 115. Matters showing relevancy of other facts.
 - 116. Matters explanatory of facts in evidence or of inferences therefrom.
 - 117. Evidence irrelevant unless preceded or followed by other evidence.
- #### (B) RES GESTAE; EXCITED UTTERANCES.
- 118. Nature of doctrine in general; determination of question of admissibility.
 - 119. Facts forming part of same transaction.
 - (1). In general.
 - (2). Negotiations resulting in oral contract.
 - (3). Writings evidencing or forming part of transaction.
 - 120. Acts and statements accompanying or connected with transaction or event.
 - 121. — In general.
 - (1). In general.
 - (2). By agents or employees.
 - (3). Writings.
 - (4). Motive and intent in general.
 - (5). Residence or domicile.
 - (6). Ownership or possession of property.
 - (7). Execution of contract in general.
 - (8). Existence or nature of contract and relation of parties.
 - (9). Sale or conveyance.
 - (10). Tender, payment, or delivery of money or property.
 - (11). Torts in general.
 - (12). Personal injuries.
 - (13). Injury to or loss of property.
 - (14). Assault.

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IV. ADMISSIBILITY IN GENERAL.(Cont'd)

- (15). False imprisonment and malicious prosecution.
- (16). Alienation of affections.
- (17). Fraud.
- 122. — Before transaction or event.
 - (1). In general.
 - (2). Acts or statements of agents or employees in general.
 - (3). Motive or intent in general.
 - (4). Residence or domicile.
 - (6). Personal injuries.
 - (7). Fraud.
 - (8). Statements made during negotiations leading to execution of contract.
- 123. — After transaction or event.
 - (1). In general.
 - (2). Writings.
 - (3). Acts or statements by agents or employees, in general.
 - (4). Motive and intent in general.
 - (5). Fraud.
 - (6). Grounds of separation or divorce.
 - (7). Existence, nature, or validity of contract or transfer of property.
 - (8). Torts in general.
 - (9). Assault.
 - (10). Personal injuries in general.
 - (11). Acts and statements of agents or employees in relation thereto.
 - (12). Injuries to or loss of property.
- 124. Acts and statements of person sick or injured.
- 125. — In general.
- 126. — Statements as to cause of injury.
 - (5). In general.
 - (1). At or near time or place of injury.
 - (2). Not contemporaneous with occurrence.
 - (3). Statements at another place.
 - (4). Response to inquiries.
 - (5). Dying declarations.
- 127. — Statements as to and expressions of personal injury or suffering.
 - (1). In general.
 - (2). At or near time or place of injury.
 - (3). Not contemporaneous with occurrence of injury.

IV. ADMISSIBILITY IN GENERAL.(Cont'd)

- (4). Exclamations and expressions indicating pain or mental suffering.
- (5). Past sufferings or condition.
- 128. — Statements made for purpose of medical diagnosis or treatment.
- (C) SIMILAR FACTS AND TRANSACTIONS.
- 129. Relation to issues in general.
 - (1). In general.
 - (2). Difference in time.
 - (3). Associated or explanatory transactions.
 - (4). Representations.
 - (5). Similar wrongful acts.
 - (6). Similar transactions.
- 130. Exclusion as res inter alios acta.
- 131. Similarity of conditions.
- 132. Showing physical or mental condition.
- 133. Showing intent or malice or motive.
- 134. — In general.
- 135. — Fraud.
 - (1). In general.
 - (2). Misrepresentations.
 - (3). Fraudulent conveyances.
- 136. — Malice.
- 137. Showing knowledge.
- 138. Part of series showing system or habit.
- 139. Showing custom or course of business.
- 140. Showing methods of preventing injury.
Excludes evidence of subsequent remedial measures; see EVIDENCE §219.10.
- 141. Other injuries or accidents from same or similar causes.
- 142. Showing value.
 - (5). In general.
 - (1). Sales of other property in general.
 - (2). Difference in location of other property.
 - (3). Difference in time of sale.
 - (4). Value of other property.
 - (5). Services.
- (D) MATERIALITY.
- 143. Importance in general.
- 144. Certainty.
- 145. Remoteness.
- 146. Tendency to mislead or confuse.
- 147. Negative evidence.

157. EVIDENCE

(E) COMPETENCY.

- 148. Nature and source of evidence in general.
- 150. Results of experiments.
- 151. Testimony as to intent, motive, or condition of mind.
 - (1). In general.
 - (2). Execution and delivery of contracts and conveyances.
 - (3). Wrongful acts in general.
 - (4). Negligence and contributory negligence.
 - (5). Libel and slander.
 - (6). Usury.
 - (7). Good faith in general.
 - (8). Fraud and misrepresentation.
- 152. Testimony as to character or reputation.
- 153. Excuse for failure to testify, to call witness, or to produce evidence.
- 154. Evidence wrongfully obtained.
- 155. Evidence admissible by reason of admission of similar evidence of adverse party.
 - (1). In general.
 - (2). Character or reputation.
 - (3). Value.
 - (4). Title, ownership, or possession of property.
 - (5). Admission of similar evidence when first evidence was inadmissible.
 - (6). Opinion evidence.
 - (7). Fraud or other wrongdoing.
 - (8). Documentary evidence.
 - (9). Care, skill, competency, or mental condition.
 - (10). Declarations or conversations as rebuttal.
 - (11). Damage or injuries.
- 156. Evidence inadmissible by reason of exclusion of similar evidence of adverse party.

V. BEST AND SECONDARY EVIDENCE.

- 157. Necessity and admissibility of best evidence.
 - (5). In general.
 - (1). Existence of better evidence as ground of exclusion.
 - (2). Admissibility of best evidence.

V. BEST AND SECONDARY EVIDENCE.(Cont'd)

- (3). Existence of better evidence.
 - (4). Degrees of oral evidence.
 - (5). Matters not required to be in writing or recorded.
 - (6). Matters required to be in writing or recorded.
 - (7). Matters made best evidence by statute.
 - (8). Exclusion of documentary evidence as inferior to oral evidence.
- 158. Facts or transactions described in or evidenced by writing.
 - (1). In general.
 - (2). Payment or release.
 - (3). Ownership, possession, or control.
 - (4). Authority, appointment, or commission.
 - (5). Judicial acts, proceedings, and records in general.
 - (6). Recovery, entry, or enforcement of judgment.
 - (7). In criminal cases.
 - (8). Orders of court.
 - (9). Attachment, garnishment, or execution.
 - (10). Judicial sales.
 - (11). Administration or distribution of estates.
 - (12). Insolvency or bankruptcy.
 - (13). Pleadings, process and evidence.
 - (14). Appeal.
 - (15). Official acts, proceedings, and records in general.
 - (16). Assessment, levy, and collection of taxes.
 - (17). Acts of municipal boards.
 - (18). Existence of public ways.
 - (19). Official character, election, appointment, or resignation.
 - (20). Executive acts.
 - (21). Licenses.
 - (22). Record of land office.
 - (23). Official bonds.
 - (24). Enlistment in military service.
 - (25). Administration of oath.
 - (26). Corporate acts, proceedings, and records.

157. EVIDENCE

V. BEST AND SECONDARY EVIDENCE.(Cont'd)

- (27). Conveyances, contracts, and other instruments.
- (28). Books of account, private memoranda, and correspondence.
- (29). Notices.
- 159. Fact of making or existence of writing.
- 160. Contents of writings.
- 161. — In general.
- 161.1. — Necessity of producing document if accessible.
- 161.2. — Statutes and laws.
- 161.3. — Newspapers.
- 161.4. — Plats, maps and surveys.
- 162. — Judicial acts, proceedings, and records.
 - (1). In general.
 - (2). Judgment or decree.
 - (3). Pleadings or evidence.
 - (4). Orders of court or judicial writs.
 - (5). Judicial sales.
- 163. — Official acts, proceedings, and records.
- 164. — Corporate acts, proceedings, and records.
- 165. — Conveyances, contracts, and other instruments.
 - (1). In general.
 - (2). Contracts of partnership or lease.
 - (3). Sealed instruments.
 - (4). Wills.
 - (5). Negotiable instruments.
- 166. — Books of account.
- 167. — Private memoranda and statements.
- 168. — Letters, telegrams, and other correspondence.
- 169. — Notices.
- 170. — Inscriptions, labels, names, and marks.
- 171. Writings collateral to issues.
- 172. Admissions as to contents of writings.
- 173. Original writing as best evidence.
- 174. — In general.
- 174.1. — Copies in general.
- 174.2. — Books of account.
- 174.3. — Conveyances, leases and other sealed instruments.
- 174.4. — Notices, letters and telegrams.

V. BEST AND SECONDARY EVIDENCE.(Cont'd)

- 174.5. — Contracts.
- 175. — Public records or documents.
- 176. Grounds for admission of secondary evidence.
- 177. — In general.
- 178. — Destruction or loss of primary evidence.
 - (.5). In general.
 - (1). By party offering secondary evidence.
 - (1.5). By adverse party.
 - (2). Writings in general.
 - (3). Records.
 - (4). Sealed instruments.
 - (5). Judicial papers.
 - (6). Letters and telegrams.
 - (7). Appointments.
 - (8). Orders, warrants, and negotiable instruments.
 - (9). Contracts, assignments, and bills of sale.
 - (10). Laws and ordinances.
 - (11). Books of account and receipts.
 - (12). Wills.
 - (13). Notices and publications.
 - (14). Pictures and photographs.
- 179. — Possession or control of primary evidence.
 - (1). In general.
 - (2). Possession by adverse party.
 - (3). Possession by third persons.
 - (4). Presumptions as to possession.
- 180. Preliminaries to admission of secondary evidence.
- 181. — In general.
- 182. — Proof as to existence of primary evidence.
- 183. — Proof as to destruction or loss of and search for primary evidence.
 - (.5). In general.
 - (1). Necessity and method of proof.
 - (1.5). Presumptions and burden of proof.
 - (2). Admissibility of evidence.
 - (3). Weight and sufficiency in general.
 - (4). Records.
 - (5). Plats.

157. EVIDENCE

V. BEST AND SECONDARY EVIDENCE.(Cont'd)

- (6). Negotiable instruments and receipts.
- (7). Judicial papers.
- (8). Books of account.
- (9). Bills of sale.
- (10). Leases and grants.
- (11). Mortgages and trust deeds.
- (12). Bonds.
- (13). Contracts and assignments.
- (14). Letters and telegrams.
- (15). Conveyances.
- 184. ——— Proof as to possession or control of primary evidence.
- 185. ——— Notice to produce primary evidence.
 - (.5). In general.
 - (1). Necessity and sufficiency in general.
 - (2). Notice to produce lost instruments.
 - (3). Description or identification of primary evidence.
 - (4). Time of service.
 - (4.5). Sufficiency of service in general.
 - (5). Notice embodied in pleadings.
 - (6). Notice to absent parties or where document is out of jurisdiction.
 - (7). Filing of suit as notice.
 - (8). Service on counsel or representative.
 - (9). Notice to person not in possession of document.
 - (10). Verbal notice.
 - (11). Notice excused by misconduct of adverse party.
 - (12). Proof of service.
- 186. Character and degrees of secondary evidence.
 - (1). In general.
 - (2). Oral evidence.
 - (3). Exclusion of parol evidence as inferior to copies or other documents.
 - (4). Subscribing witnesses.
 - (5). Memoranda and other documents.
 - (6). Copies and counterparts.
 - (7). Sufficiency.
 - (8). Acts and declarations.

V. BEST AND SECONDARY EVIDENCE.(Cont'd)

- (9). Records and abstracts.
- 187. Determination of question of admissibility.

VI. DEMONSTRATIVE EVIDENCE.

- 188. Exhibition of person or object in general.
- 189. Identity.
- 191. Race, color, sex, and age.
- 192. Wounds and other injuries.
- 193. Weapons, missiles, and other instruments.
- 194. Articles subject of or connected with controversy.
- 195. Duplicates, models, and casts.
- 196. Writings submitted for comparison.
- 197. ——— In general.
- 198. ——— Reproduction and enlargement.

VII. ADMISSIONS.

(A) NATURE, FORM, AND INCIDENTS IN GENERAL.

- 200. Nature and grounds for admission in general.
- 201. Subject-matter.
- 202. Interest of party and relation of admission thereto.
- 203. Capacity of person making admission, and voluntary character thereof.
- 204. Persons to whom made.
- 205. Mode of making and form in general.
 - (1). In general.
 - (2). Admissions through interpreters.
 - (3). Conversation through telephone.
 - (4). Admissions as to indebtedness and amount thereof.
 - (5). Omission of matters from writing.
- 206. Judicial admissions.
- 207. ——— In general.
 - (1). In general.
 - (2). By counsel.
 - (3). Proceedings before arbitrators.
 - (4). Confession or plea of guilty in criminal prosecution.
 - (5). Offer of judgment or judgment by default.
- 208. ——— Pleadings.
 - (.5). In general.

157. EVIDENCE

VII. ADMISSIONS.(Cont'd)

- (1). Admissibility in same proceedings.
- (2). Admissibility in subsequent proceedings in general.
- (3). Same or different parties.
- (4). Pleadings not verified or signed.
- (5). Pleadings not filed.
- (6). Pleadings superseded, withdrawn, or abandoned.
- (7). Allegations or defenses stricken out or overruled.
- (8). Pleadings in suit dismissed.
- (9). Admissibility of pleadings in justice court on appeal therefrom.
209. — Stipulations and agreed statements.
210. — Petitions, affidavits, and depositions.
211. — Testimony.
212. Offers of compromise or settlement.
213. — In general.
 - (1). In general.
 - (2). What constitutes offer.
 - (3). Persons by or to whom made.
 - (4). Admission of distinct or independent facts.
 - (5). Offer or consent to arbitrate.
214. — Admissions made without prejudice.
215. Statements in writing.
 - (1). In general.
 - (2). Writings not executed or not delivered.
 - (3). Letters.
 - (4). Newspaper articles.
 - (5). Valuation of property for taxation.
216. Oral statements.
217. — In general.
218. — Relating to matters of record or in writing.
219. Acts or conduct.
 - (1). In general.
 - (2). Suppressing testimony.
 - (3). Compromise or settlement.
- 219.10. Subsequent remedial measures.
- 219.15. — In general.
- 219.20. — What are subsequent remedial measures.
 - (1). In general.

VII. ADMISSIONS.(Cont'd)

- (2). Reports and analyses.
- (3). Time relative to manufacture, sale or event.
- 219.25. — Establishing negligence or culpable conduct.
 - (1). In general.
 - (2). Purpose of exclusion.
 - (3). Change of design or product.
- 219.30. — Strict liability cases.
- 219.35. — Establishing facts other than culpable conduct.

Excludes use for impeachment; see WITNESSES
⊙406.
- 219.40. — Existence of defect.
- 219.45. — Existence of duty.
- 219.50. — Ownership or control.
- 219.55. — Feasibility of precautions.
 - (1). In general.
 - (2). Change of design or product.
- 219.60. — Condition of premises or articles.
- 219.65. — Warnings, instructions or recall notices.
- 219.70. — Measures compelled by superior authority.
- 219.75. — Measures taken by third parties.
 - (1). In general.
 - (2). Employers of parties.
220. Acquiescence or silence.
 - (1). In general.
 - (2). Failure to deny or object to oral statements in general.
 - (3). Necessity that oral statement be heard and understood.
 - (4). Oral statements by husband or wife.
 - (5). Oral statements made in court.
 - (6). Failure to deny or object to written statements in general.
 - (7). Failure to dispute book entries or accounts.
 - (8). Failure to answer letter or statements therein.
- (B) BY PARTIES OR OTHERS INTERESTED IN EVENT.
221. Parties of record.
222. — In general.
 - (1). In general.

157. EVIDENCE

VII. ADMISSIONS.(Cont'd)

- (2). Statements as to particular facts in general.
- (3). Disparagement of title or interest.
- (4). Statements as to intent, motive, or nature of act.
- (5). Statements showing knowledge.
- (6). Statements as to existence, validity, and amount of debt, or payment thereof.
- (7). By parties to contest of will.
- (8). Time of making admission in general.
- (9). Parties having no interest in subject-matter at time of admission.
- (10). Coparties.
- 223. — Nominal and unnecessary parties.
- 224. Real party in interest.
- 225. Interest in suit of persons not parties.
- 226. Joint interest.
 - (1). In general.
 - (2). Co-obligors.
 - (3). Coexecutors or coadministrators.
 - (4). Coheirs and devisees or legatees.
- 227. Persons suing or defending in different character or capacity.
- 228. Persons interested in subject-matter without interest in suit.

(C) BY GRANTORS, FORMER OWNERS, OR PRIVIES.

- 229. Privies and former owners in general.
- 230. Grantors, vendors, or mortgagors of real property.
 - (1). In general.
 - (2). Before conveyance or transfer of possession.
 - (3). After conveyance or transfer of title in general.
 - (4). Showing nature of conveyance.
 - (5). Showing fraud.
 - (6). After conveyance, but before transfer of possession.
- 231. Sellers or mortgagors of chattels.
 - (1). In general.
 - (2). Before transfer or delivery of possession.

VII. ADMISSIONS.(Cont'd)

- (3). After transfer or delivery of possession.
- (4). After parting with title, but before change of possession.
- 232. Bankrupts and assignors for benefit of creditors.
- 233. Donors.
- 234. Assignors of rights in action in general.
- 235. Former holders of bills or notes.
- 236. Testators and intestates.
 - (1). In general.
 - (2). Admission of indebtedness.
 - (3). Disparagement of title in general.
 - (4). Statements by persons in possession.
 - (5). Statements showing transfer of property.
 - (6). Admissibility against widow.

(D) BY AGENTS OR OTHER REPRESENTATIVES.

- 237. Authority in general.
- 238. Authority at time of admission.
- 239. Interest of party or representative.
- 240. Agents or employees.
- 241. — In general.
 - (1). In general.
 - (2). Statements by agents since deceased.
 - (3). Statements by subagent or special agent.
- 242. — Scope and extent of agency or employment.
 - (1). In general.
 - (2). Agents with special or limited authority.
 - (3). Architects and building contractors.
 - (4). Brokers.
 - (5). Employees.
 - (6). Interpreters.
 - (7). Persons in possession of property.
 - (8). Statements expressly authorized.
 - (9). Report of agent to principal.
 - (10). Statement of opinion.
- 243. — Admissions before or after transaction or event.
 - (5). In general.
 - (1). Before transaction or event.

157. EVIDENCE

VII. ADMISSIONS.(Cont'd)

- (2). After transaction or event in general.
- (3). To show existence or terms of contract.
- (4). To show negligence or cause of injury to person or property.
- (5). Statement by captain or master of boat.
- (6). Testimony at former trial.
- (7). Termination of agency or employment.
- 244. Corporate officers or agents.
 - (1). In general.
 - (2). Scope and extent of agency or employment in general.
 - (3). Statements by receivers.
 - (4). Statements by officers of banks.
 - (5). Statements by officers of insurance companies.
 - (6). Statements by officers of carriers.
 - (7). Statements by agents and employees in general.
 - (8). Statements by agents and employees of insurance companies.
 - (9). Statements by agents and employees of carriers.
 - (10). Statements made before transaction or event.
 - (11). Statements made after transaction or event in general.
 - (12). Statements by officers or agents of banks.
 - (13). Statements by officers or agents of insurance companies.
 - (14). Statements by officers, agents, or employees of carriers in general.
 - (15). To establish liability of carrier for injury to persons.
 - (16). To establish liability of carrier for loss of or injury to property.
 - (17). Statements made after termination of agency.
- 245. Public officers or agents.
- 246. Attorneys.
- 247. Persons referred to for information.
- 248. Husband or wife.
 - (1). In general.

VII. ADMISSIONS.(Cont'd)

- (2). Authority in particular instances.
- (3). Actions for injuries to wife.
- (4). Husband and wife jointly sued.
- (5). Time of making statement in general.
- (6). Statements made after transaction or event.
- (7). Statements not made during coverture.
- 249. Partners and joint contractors.
 - (1). In general.
 - (2). Admissibility as against partner making admission.
 - (3). Statements made after dissolution.
 - (4). Statements by surviving partner.
- 250. Principal or surety.
- 251. Trustee or beneficiary.
 - (1). In general.
 - (2). Personal representatives.
- 252. Insured or beneficiary.
- 253. Conspirators and persons acting together.
 - (1). In general.
 - (2). Necessity that statement be made in pursuance of and during pendency of conspiracy.
 - (3). Fraudulent conveyances.
- (E) PROOF AND EFFECT.
- 254. Laying foundation for impeachment of testimony of party.
- 255. Preliminary evidence.
- 256. — In general.
- 257. — Identity of title or interest.
- 258. — Existence and extent of agency or authority.
 - (1). In general.
 - (2). Weight and sufficiency.
- 259. — Existence of partnership.
- 260. — Existence of conspiracy or common purpose.
- 261. Determination of question of admissibility.
- 262. Mode and requisites of proof of admissions.
- 263. Explanation or limitation.
 - (1). In general.
 - (2). Right to show entire statement or conversation.

157. EVIDENCE

VII. ADMISSIONS.(Cont'd)

- (3). Contrary statements made at a different time.
- (4). Pleadings, affidavits, or depositions.
- 264. Construction.
- 265. Conclusiveness and effect.
 - (1). In general.
 - (2). As to particular facts in general.
 - (3). As to indebtedness.
 - (4). As to payment.
 - (5). As to title or possession.
 - (6). As to agency.
 - (7). Judicial admissions in general.
 - (8). Pleadings.
 - (9). Stipulations and affidavits.
 - (10). Testimony.
 - (11). Guilty or nolo contendere plea in criminal prosecution.
 - (12). Implied admissions.
 - (13). Admissions qualified, limited, or contradicted.
 - (14). Admissions made through ignorance or mistake.
 - (15). Admissions of law.
 - (16). Admissions introduced to impeach witness.
 - (17). Conclusiveness as against privies, codefendants, and persons represented by or jointly interested with declarant.
 - (18). Weight and credibility.

VIII. DECLARATIONS.

(A) NATURE, FORM, AND INCIDENTS IN GENERAL.

- 266. Nature and grounds for admission in general.
- 267. Making of statement fact in issue.
- 268. Statements showing physical or mental condition; state of mind.
- 269. Statements showing intent, motive, or nature of act.
 - (1). In general.
 - (2). Statements by persons since deceased.
 - (3). Statements by persons transferring property.
- 270. Difficulty of producing direct evidence.
- 271. Self-serving declarations in general.

VIII. DECLARATIONS.(Cont'd)

- (5). In general.
- (1). Statements by parties of record in general.
- (2). Application of rule in general.
- (3). Statements by partners, joint contractors, or codefendants.
- (4). Statements by debtor as to payment.
- (5). Statements to agents, employees, or attorneys.
- (6). Statements as to intent, motive, or nature of act.
- (7). Statements as to terms or meaning of contract.
- (8). Statements as to residence or domicile.
- (9). Statements as to title.
- (10). Time of making statement in general.
- (11). Statements after controversy or suit commenced.
- (12). Statements by third persons in general.
- (13). Statements by agents, employees, or attorneys.
- (14). Statements by husband or wife.
- (15). Statements by grantors, assignors or former owners.
- (16). Statements by persons since deceased in general.
- (17). Statements by persons since deceased as to title or possession.
- (18). Written statements in general.
- (19). Letters.
- (20). Pleadings.
- (21). Affidavits.
- (22). Testimony.
- 272. Declarations against interest in general.
- 273. Declarations of person in possession or control as to title or possession.
 - (1). In general.
 - (2). Real property in general.
 - (3). Self-serving declarations relating to real property.
 - (4). Declarations against interest relating to real property.
 - (5). Personal property.
- 274. Declarations as to boundaries.
 - (1). In general.

157. EVIDENCE

VIII. DECLARATIONS.(Cont'd)

- (2). Self-serving declarations.
 - (3). Title or interest at time of declaration.
 - (4). Declarations by third persons in general.
 - (5). Declarations by adjoining owners.
 - (6). Declarations by former owners.
 - (7). Declarations by deceased persons in general.
 - (8). Interest of deceased declarant and means of knowledge.
 - (9). Deceased surveyors.
 - (10). Deceased declarant not on land at time of declaration.
 - (11). Deceased former owners.
275. Declaration in course of business or performance of duty.
- 275.5. Dying declarations.

(B) BY DECEDENTS AGAINST INTEREST.

276. Declarations against interest in general.
277. Disparagement of title.
278. Statements as to fact or nature of transfer or gift.
279. Knowledge as to subject-matter.
280. Motive in making declaration.
281. Time of making declaration.
282. Relation of declaration to controversy.
283. Mode and form of declaration.
284. Death of person making declaration.

(C) AS TO PEDIGREE, BIRTH, AND RELATIONSHIP.

285. Nature of questions of pedigree and matters relating thereto.
286. Matters of pedigree facts in issue.
287. Family records.
288. General and family reputation.
289. Declarations by members of family.
290. — In general.
291. — By deceased members.
292. — Necessity that declarant be dead.
293. — Relationship to family.
294. — Knowledge as to subject-matter.
295. — Time of making declaration.
296. — Relation of declaration to controversy.
297. — Mode and form of declaration.

(D) AS TO MATTERS OF PUBLIC OR GENERAL RIGHT OR INTEREST.

298. Matters of public right or interest.
299. Matters of general right or interest.
300. Matters of private interest involved with public right or interest.
301. Public records.
302. General reputation.
303. Declarations as to specific facts.
304. — In general.
305. — Knowledge as to subject-matter.
306. — Time of making declaration.
307. — Relation of declaration to controversy.
308. — Mode and form of declaration.

(E) PROOF AND EFFECT.

309. Preliminary evidence.
310. Determination of question of admissibility.
311. Mode and requisites of proof of declarations.
312. Construction.
313. Conclusiveness and effect.

IX. HEARSAY.

314. Nature and admissibility.
- (1). In general.
 - (2). Hearsay evidence of opinions.
 - (3). Evidence of death.
 - (4). Conversation through interpreter.
 - (5). Information acted on by witness.
315. Statements by persons other than parties or witnesses.
- 315.1. — In general.
317. — Oral statements.
- (1). In general.
 - (2). Statements in general.
 - (3). Bodily and mental condition.
 - (4). Writings, contracts, agreements, and transactions.
 - (5). Ownership and possession.
 - (6). Value and price.
 - (7). Indebtedness and payment.
 - (8). Cause.
 - (9). Due care and nature of act.
 - (10). Condition or sufficiency of things.
 - (11). Weight, amount, and quality.

157. EVIDENCE

IX. HEARSAY.(Cont'd)

- (12). Representative character and relationship.
- (13). Election acts.
- (14). Identity.
- (15). Intention.
- (16). Residence.
- (17). Statements of persons available as witnesses.
- (18). Statements by persons since deceased.
- 318. — Writings.
 - (1). In general.
 - (2). Letters and telegrams.
 - (3). Records.
 - (4). Reports.
 - (5). Receipts.
 - (6). Books.
 - (7). Certificates and affidavits.
 - (8). Pleadings.
- 319. Evidence founded on hearsay.
- 320. — In general.
- 321. — Testimony of person as to his age.
- 322. — Reputation as to persons.
 - (1). In general.
 - (2). Character.
 - (3). Death.
 - (4). Condition of servitude.
 - (5). Mental condition.
 - (6). Pecuniary condition.
- 323. — Market value shown by sales, offers to purchase or sell, or market quotations.
 - (1). In general.
 - (2). Sales.
 - (3). Offers to purchase or sell.
 - (4). Market quotations.
- 324. — Repute as to facts.
 - (1). In general.
 - (2). Possession.
 - (3). Ownership.

X. DOCUMENTARY EVIDENCE.

(A) PUBLIC OR OFFICIAL ACTS, PROCEEDINGS, RECORDS, AND CERTIFICATES.

- 325. Public records, documents, and publications in general.
- 326. State papers.
- 327. Laws.

X. DOCUMENTARY EVIDENCE.(Cont'd)

- 328. — In general.
- 329. — Private statutes.
- 330. — Ordinances.
- 331. — Foreign laws.
- 332. Judicial acts and records.
 - (1). In general.
 - (2). Matters included in record in general.
 - (3). Pleadings.
 - (4). Stenographers' notes.
 - (5). Writs and returns thereon.
 - (6). Records of justices of the peace.
 - (7). Records of probate courts.
 - (8). Minutes of proceedings.
- 333. Official records and reports.
 - (1). In general.
 - (2). Records of county officers in general.
 - (3). Entries by clerks of court.
 - (4). Tax records and receipts.
 - (5). Records, reports, and returns of surveyors.
 - (6). School records.
 - (7). Records kept by United States officers in general.
 - (8). Weather records.
 - (9). Records of boards of health.
 - (10). Private books and memoranda of officers.
 - (11). Unauthorized acts and records.
 - (12). Minutes and memoranda.
- 334. Official certificates.
 - (1). In general.
 - (2). Scope of official duty.
 - (3). Certificates of inspection.
 - (4). Certificates of death or cause thereof.
 - (5). Conformity with statute.
- 335. Grants and patents for land, and proceedings in land office.
 - (1). In general.
 - (2). Surveys and maps.
 - (3). Certificates of officers.
 - (4). Official correspondence.
- 336. Records of conveyances and other private writings.
 - (1). In general.

157. EVIDENCE

X. DOCUMENTARY EVIDENCE. (Cont'd)

(2). Instruments improperly admitted to record.

(3). Form and validity of instrument.

337. Municipal records.

(B) EXEMPLIFICATIONS, TRANSCRIPTS, AND CERTIFIED COPIES.

338. Necessity and admissibility in general.

339. Statutory provisions.

340. Judicial records and proceedings.

(1). In general.

(2). Of federal courts in state courts.

(3). Of probate courts.

(4). Of justices of the peace.

(5). Copy of transcript.

341. Official documents, records, and proceedings in general.

342. Records and proceedings in land office.

343. Records of conveyances and other private writings.

(1). In general.

(2). Admissibility of abstract of title.

(3). Deeds and contracts of sale in general.

(4). Mortgages and assignments.

(5). Articles of incorporation.

(6). Effect of statutes requiring record.

(7). Instruments not required or authorized to be recorded.

(8). Execution and proof of original.

(10). Place of record.

344. Municipal records.

345. Requisites of exemplification or certificate.

(1). In general.

(2). Judicial acts, records, and proceedings.

346. Acts, records, and judicial proceedings of other states.

347. — In general.

348. — Requisites of exemplification or certificate.

(1). In general.

(2). Judicial acts, records, and proceedings.

349. Acts, records, and judicial proceedings of foreign countries.

(C) PRIVATE WRITINGS AND PUBLICATIONS.

350. Unofficial writings in general.

351. Unofficial or business records in general.

352. Corporate records and proceedings.

(1). In general.

(2). Constitution, by-laws, and rules.

(3). Parties against whom admissible.

(4). Names of subscribers and amount of subscription.

(5). Form and authenticity in general.

(6). Copies.

353. Conveyances, contracts, and other instruments.

(1). In general.

(2). Relation to matters in controversy in general.

(3). Recitals of fact in general.

(4). Admissions in general.

(5). Consideration.

(6). Pedigree, relationship, birth, and death.

(7). Nature of instrument in general.

(8). Form and validity in general.

(9). Execution and proof.

(10). Delivery.

(11). Record.

(12). Void instruments.

(13). Instruments showing only part of transaction or agreement.

(14). Documents insufficient or incomplete when standing alone.

(15). Instruments executed in other state or country.

354. Books of account.

(5). In general.

(1). Books of particular persons in general.

(2). Character of books in general.

(3). Diaries and memoranda of accounts.

(4). Day books.

(5). Ledgers.

(6). Passbooks.

(7). Stubs of check and receipt books.

(8). Time books.

(9). Matters proper for book entries.

(10). Form, regularity, and sufficiency of entries in general.

(11). By whom entries are made.

(12). Delay in making entries.

157. EVIDENCE

X. DOCUMENTARY EVIDENCE.(Cont'd)

- (13). Entries made from memoranda or other information.
- (14). Extracts from account and transcribed entries.
- (15). Mutilated and shopworn books.
- (16). Completeness of account.
- (17). Purposes of proof in general.
- (18). Persons bound in general.
- (19). Evidence for party in general.
- (20). Amount of charge.
- (21). Persons charged in entry.
- (22). Entries by decedents in general.
- (22.5). Absence or insanity of person making entries.
- (23). Death of party charged.
- (24). Entries against interest in general.
- (25). Entries against interest by decedents.
- (26). Books of third persons.
- 355. Private memoranda and statements in general.
 - (1). In general.
 - (2). Statements of account.
 - (3). Items of property and value thereof; invoices.
 - (4). Memorandum of parol contract or conversation.
 - (5). Admissibility in connection with oral testimony.
 - (6). Past recollection recorded.
 - (7). Death or absence of person making memoranda or statement.
- 356. Statements prepared for use at trial.
- 357. Letters, telegrams, and other correspondence.
- 358. Maps, plats, and diagrams.
- 359. Photographs and other pictures; sound records and pictures.
 - (5). In general.
 - (1). Photographs in general.
 - (2). Physical appearance and identity of persons.
 - (3). Condition of premises.
 - (4). Roentgen or X-ray process.
 - (5). Sound records in general.
 - (6). Motion pictures.
- 360. Books and other printed publications.
- 361. — In general.

X. DOCUMENTARY EVIDENCE.(Cont'd)

- 362. — Statutes, law reports, and legal text-books.
 - 363. — Scientific and technical works; safety standards.
 - 364. — Mortality tables and tables of expectancy of life.
 - 365. — Annuity tables.
- (D) PRODUCTION, AUTHENTICATION, AND EFFECT.**
- 366. Public documents, records, exemplifications, or official copies.
 - (1). In general.
 - (2). Proof of genuineness in general.
 - (3). Judicial acts and records.
 - (4). Plats.
 - (5). Documents or records from other state or foreign country.
 - (6). Production of part of record or document in general.
 - (7). Part of judicial proceedings.
 - (8). Necessity of producing part showing jurisdiction.
 - (9). Part of probate record.
 - (10). Parol or extrinsic evidence to supply defects.
 - (11). Official deeds in general.
 - (12). Altered records.
 - 367. Examined copies of records.
 - 368. Compelling production by adverse party.
 - (1). In general.
 - (2). Nature of document and relation to issue.
 - (3). Application.
 - (4). Notice in general.
 - (5). Form and sufficiency of notice.
 - (6). Subpoena duces tecum.
 - (7). Time for application or notice.
 - (8). Hearing and determination.
 - (9). Effect of order or notice, and time for production.
 - (10). Excuse for nonproduction.
 - (11). Vacation of order.
 - (12). Effect of failure to produce.
 - (13). Effect of production in general.
 - (14). Introduction by party producing document.
 - 369. Preliminary evidence for authentication.
 - 369.1. — In general.
 - 370. — Necessity in general.

157. EVIDENCE

X. DOCUMENTARY EVIDENCE. (Cont'd)

- (1). In general.
- (2). Denial of execution.
- (3). Corporate acts, records, and proceedings.
- (4). Conveyances, contracts, and other writings in general.
- (5). Proof of authority to execute.
- (6). Proof of recording.
- (7). Unrecorded instruments.
- (8). Record as dispensing with proof of execution.
- (9). Documents produced on notice or order.
- (10). Proof of execution of original to authorize introduction of copy.
- (11). Instruments, and assignment, indorsement, or guaranty thereof.
- (12). Proof of delivery.
371. — Writings collateral to issues.
372. — Ancient documents.
 - (1). In general.
 - (2). Necessity of authentication in general.
 - (3). Age of instrument.
 - (4). Sufficiency of authentication in general.
 - (5). Proof of possession under instrument.
 - (6). Custody of instrument.
 - (7). Document attacked as not genuine.
 - (8). Deeds of officers or other representatives.
 - (9). Ancient wills.
 - (10). Public records.
 - (11). Ancient maps, plans, and surveys.
 - (12). Defects and irregularities in instrument.
373. — Form and sufficiency in general.
 - (1). In general.
 - (2). Corporate acts, records, and proceedings.
 - (3). Unwitnessed instruments and unauthorized attestation.
 - (4). Joint instruments.
 - (5). Admissions.

X. DOCUMENTARY EVIDENCE. (Cont'd)

- (6). Proof of copies offered as evidence.
374. — Attesting witnesses.
 - (1). In general.
 - (2). Instruments signed or attested by mark.
 - (3). Competency and identity of subscribing witness.
 - (4). Certainty and sufficiency of testimony.
 - (5). Evidence of only part of attesting witnesses.
 - (6). Necessity and admissibility of evidence.
 - (7). Grounds for secondary evidence.
 - (8). Preliminaries to admission of secondary evidence of execution.
 - (8.5). Character and sufficiency of secondary evidence.
 - (9). Genuineness of handwriting.
 - (10). Testimony of parties to instrument.
 - (11). Contradictory and rebutting testimony.
375. — Handwriting.
376. — Books of account.
 - (1). In general.
 - (2). Admissions by party charged.
 - (3). Testimony of party who has settled by books offered.
 - (4). Proof of handwriting in general.
 - (5). Testimony of party.
 - (6). Necessity of producing person who made entry.
 - (7). Absence of party making entries.
 - (8). Death of party making entry.
 - (9). Knowledge of witness in general.
 - (10). Memory as to transaction.
 - (11). Certainty of testimony.
 - (12). Partnership books.
 - (13). Reputation of books.
377. — Memoranda and statements.
378. — Letters, telegrams, e-mails, and other correspondence.
 - (1). In general.
 - (2). Letters received in reply.
 - (3). Proof of authority of person writing for alleged sender.
 - (4). Proof of handwriting.

157. EVIDENCE

X. DOCUMENTARY EVIDENCE.(Cont'd)

- (5). Authentication of telegrams in general.
- (6). Reply telegrams.
- 379. — Maps, plats, and diagrams.
- 380. — Photographs and other pictures; sound records and pictures.
- 381. — Books and other printed publications.
- 382. Determination of question of admissibility.
- 383. Conclusiveness and effect.
 - (.5). In general.
 - (1). Use by adverse party.
 - (2). Public documents and publications in general.
 - (3). Judicial and official acts, proceedings, records, reports, and statements.
 - (4). Official certificates.
 - (5). Foreign records.
 - (6). Corporate records.
 - (7). Private contracts and other writings.
 - (8). Books of account.
 - (9). Maps, plats, and diagrams.
 - (10). Photographs.
 - (11). Books and other printed publications.
 - (12). Effect of introducing part of document or record.

XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.

(A) CONTRADICTING, VARYING, OR ADDING TO TERMS OF WRITTEN INSTRUMENT.

- 384. Grounds for exclusion of extrinsic evidence.
- 385. Writings excluding extrinsic evidence in general.
- 386. Judicial records and proceedings.
 - (1). In general.
 - (2). In probate court.
 - (3). In justice's court.
 - (4). Affecting jurisdiction.
 - (5). Orders of court.
 - (6). Damages included in judgment or award.
 - (7). Taking poor debtor's bond or recognizance.

XI. PAROL OR EXTRINSIC EVIDENCE AFFECTING WRITINGS.(Cont'd)

- 387. Official records and documents.
 - (1). In general.
 - (2). Legislative journal or records.
 - (3). Proceedings of land office.
 - (4). Plats and surveys.
 - (5). County records or proceedings.
 - (6). Municipal records or proceedings.
 - (7). Town records or proceedings.
 - (8). School records or proceedings.
 - (9). Registration or certificate thereof.
 - (10). Levy, assessment, and collection of taxes.
- 388. Unofficial records.
- 389. Corporate records and proceedings.
- 390. Deeds.
 - (1). In general.
 - (2). Official deed.
 - (3). Description of premises.
 - (4). Estate or interest conveyed.
 - (5). Reservations or limitations.
 - (6). Affecting covenants of warranty.
 - (7). Time of taking effect.
- 391. Bills of sale.
- 392. Assignments.
- 393. Leases.
 - (1). In general.
 - (2). Description or identity of premises.
 - (3). Repairs or improvements.
 - (4). Duration or termination of lease.
- 394. Charter parties.
- 395. Mortgages.
 - (1). In general.
 - (2). Debt or obligation secured.
- 396. Pledges.
- 397. Contracts in general.
 - (1). In general.
 - (2). Completeness of writing and presumption in relation thereto; integration.
 - (3). What constitutes contract excluding parol evidence in general.
 - (4). Subscription contracts.
 - (5). Contract for partnership or dissolution thereof.
 - (6). Compromise or settlement, and arbitration.

157. EVIDENCE

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- 398. Contracts of employment.
- 399. Contracts for buildings and other works.
- 400. Contracts of sale or exchange.
 - (1). In general.
 - (2). Real property.
 - (3). Personal property in general.
 - (4). What constitutes contract for sale of chattels.
 - (5). Description and property included.
 - (6). Warranty.
 - (7). Time or place of delivery.
- 401. Bonds.
- 402. Bills and notes.
- 403. Indorsements and transfers of bills or notes.
- 404. Contracts of guaranty and suretyship.
- 405. Contracts of insurance.
 - (1). In general.
 - (2). Property or interest covered.
 - (3). Conditions.
 - (4). Reinsurance.
 - (5). Beneficiaries.
 - (6). Indorsement on policy.
- 406. Contracts for storage.
- 407. Contracts of carriage.
 - (1). In general.
 - (2). Bill of lading.
- 408. Receipts.
 - (1). In general.
 - (2). Receipt in full on compromise, settlement, or discharge.
 - (3). Writing containing matter other than receipt.
 - (4). What constitutes receipt in general.
 - (5). Receipt of premium on insurance.
 - (6). Receipt for taxes.
 - (7). Receipt for property in general.
 - (8). Receipt for property levied on.
 - (9). Receipt for property by carrier.
 - (10). Bills of parcels.
- 409. Releases.
- 410. Memoranda not constituting contract or disposition of property.
- 411. Writing incomplete on its face.
- 412. Writing showing alteration.

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- 413. Evidence extrinsic to writing in general.
- 414. Date of instrument.
- 415. Sustaining validity of instrument.
- 416. Connection of contemporaneous writings.
- 417. Matters not included in writing or for which it does not provide.
 - (1). In general.
 - (2). Judicial records and proceedings.
 - (3). Official records and proceedings.
 - (4). Corporate records and proceedings.
 - (5). Deeds.
 - (6). Bills of sale.
 - (7). Leases.
 - (8). Mortgages or security.
 - (9). Contracts in general.
 - (10). Contracts of employment.
 - (11). Contracts for buildings and other works.
 - (12). Contracts of sale.
 - (13). Bills and notes and indorsement thereof.
 - (14). Contracts of insurance.
 - (15). Contracts for storage.
 - (16). Contracts of carriage.
 - (17). Delivery and acceptance of instrument.
 - (18). Date of instrument.
 - (19). Duration of contract and time for performance.
- 418. Parties to instrument or obligation.
- 419. Nature of consideration.
 - (1). In general.
 - (2). Deeds in general.
 - (3). Additional consideration for deed.
 - (4). Assumption or payment of debts or incumbrances.
 - (5). Acknowledgment of payment in deed.
 - (6). Sustaining validity of deed.
 - (7). Bills of sale.
 - (8). Assignments.
 - (9). Leases.
 - (10). Mortgages.
 - (11). Contracts in general.
 - (12). Contracts for buildings and other works.

157. EVIDENCE

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- (13). Contracts of sale.
- (14). Bonds.
- (15). Bills and notes.
- (16). Indorsements and transfers of bills and notes.
- (17). Contracts of guaranty and suretyship.
- (18). Contracts of insurance.
- (19). Contracts of carriage.
- (20). Releases.
- 420. Existence of condition or contingency.
 - (.5). In general.
 - (1). Deeds.
 - (1.5). Mortgages and assignments or releases thereof.
 - (2). Leases.
 - (3). Contracts in general.
 - (4). Subscriptions for corporate stock.
 - (5). Contracts of sale.
 - (6). Bonds.
 - (7). Bills and notes or indorsement thereof.
- 422. Existence or accrual of liability.
- 423. Nature and extent of liability.
 - (1). In general.
 - (2). Covenants in deeds.
 - (3). Leases.
 - (4). Mortgages.
 - (5). Bonds.
 - (6). Bills and notes and indorsement thereof.
 - (7). Contracts of guaranty.
 - (8). Principal or surety.
 - (9). Medium of payment.
- 424. Effect of writing as to persons not parties thereto or privies.
- 425. Writings collateral to issues in general.
- 426. Existence of relation created by writing.
- 427. Evidence for purpose other than varying rights or liabilities dependent upon terms of writing.

(B) INVALIDATING WRITTEN INSTRUMENT.

- 428. Grounds for admission of extrinsic evidence.
- 429. Matters affecting validity in general.
- 430. Incapacity of parties.

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- 431. Insufficiency or irregularity of execution or delivery.
- 432. Want or failure of consideration.
- 433. Mistake.
 - (1). In general.
 - (2). Judicial records and proceedings.
 - (3). Official records and proceedings.
 - (4). Deeds.
 - (5). Leases.
 - (6). Contracts in general.
 - (7). Contracts for buildings and other works.
 - (8). Contracts of sale.
 - (9). Bills and notes.
 - (10). Contracts of insurance.
 - (11). Receipts.
- 434. Fraud.
 - (1). In general.
 - (2). Judicial records and proceedings.
 - (3). In deeds.
 - (4). In bills of sale.
 - (5). In assignments.
 - (6). In leases.
 - (7). In mortgages.
 - (8). In contracts in general.
 - (9). In contracts of employment.
 - (10). In contracts for buildings and other works.
 - (11). In contracts of sale or exchange.
 - (12). In bills and notes or indorsement thereof.
 - (13). In contracts of insurance.
 - (14). In receipts.
 - (15). In releases.
- 435. Duress.
- 436. Undue influence.
- 437. Illegality.

**(C) SEPARATE OR SUBSEQUENT
ORAL AGREEMENT.**

- 439. Grounds for admission of oral evidence.
- 440. Prior and contemporaneous collateral agreements.
- 441. — In general.
 - (1). In general.
 - (2). Judicial proceedings.
 - (3). Assignments.
 - (4). Leases.

157. EVIDENCE

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- (5). Mortgages or security.
- (6). Contracts of employment.
- (7). Contracts for buildings and other works.
- (8). Sale or exchange of real property and deeds.
- (9). Sale or exchange of personal property.
- (10). Bonds.
- (11). Bills and notes or indorsement thereof.
- (12). Contracts of guaranty and suretyship.
- (13). Contracts of insurance.
- (14). Contracts of carriage.
- (15). Receipts and releases.
- 442. — Completeness of writing.
 - (1). In general.
 - (2). Bills of sale.
 - (3). Leases.
 - (4). Contracts of employment.
 - (5). Contracts for buildings and other works.
 - (6). Contracts of sale or exchange and deeds.
 - (7). Contracts of guaranty.
 - (8). Contracts of carriage.
 - (9). Releases.
- 443. — Relation of oral agreement to writing.
 - (1). In general.
 - (2). Inducement to make writing.
 - (3). Distinct consideration.
- 444. — Condition precedent to obligation under writing.
 - (5). In general.
 - (1). Leases.
 - (2). Contracts in general.
 - (3). Contracts for buildings and other works.
 - (4). Contracts of sale and deeds.
 - (5). Bonds.
 - (6). Bills and notes or indorsement thereof.
 - (7). Contracts of guaranty and suretyship.
 - (8). Contracts of insurance.
- 445. Subsequent agreements.

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- (1). In general.
- (2). Sales.
- (3). Leases.
- (4). Bills and notes or indorsement thereof.
- (5). Mortgage or security.
- (6). Contracts of employment.
- (7). Contracts for buildings or other works.
- (8). Contracts of carriage.
- (9). Extension of time for performance.
- (D) CONSTRUCTION OR APPLICATION
OF LANGUAGE OF WRITTEN
INSTRUMENT.**
- 448. Grounds for admission of extrinsic evidence.
- 449. Nature of ambiguity or uncertainty in instrument.
- 450. — In general.
 - (1). Writings in general.
 - (2). Judicial and official records and proceedings.
 - (3). Deeds.
 - (3.5). Mortgages.
 - (4). Leases.
 - (5). Contracts in general.
 - (6). Contracts of employment.
 - (7). Contracts for buildings and other works.
 - (8). Contracts of sale.
 - (9). Bonds.
 - (10). Bills and notes.
 - (11). Contracts of guaranty.
 - (12). Receipts and releases.
- 451. — Patent ambiguity.
- 452. — Latent ambiguity.
- 453. Writing illegible or unintelligible.
- 454. Meaning of words, phrases, signs, or abbreviations.
- 455. — In general.
- 456. — Peculiar sense of terms in common use.
- 457. — Technical, trade, or local terms.
- 458. Relation and application of language to facts in general.
- 459. Identification of parties.

157. EVIDENCE

**XI. PAROL OR EXTRINSIC EVIDENCE
AFFECTING WRITINGS.(Cont'd)**

- (1). In general.
- (2). Personal, official, or representative capacity.
- (3). Individual or firm.
- (4). Persons having same name.
- (5). Mistake or variance in name.
460. Identification of subject-matter.
 - (1). In general.
 - (2). In conveyances, contracts, and writings in general.
 - (3). Of real property in general.
 - (4). Application of description to subject-matter.
 - (5). Property or interest included.
 - (6). Boundaries.
 - (7). Sufficiency of description to admit parol evidence.
 - (8). Location and identification of monuments or calls.
 - (9). Reference to other instruments.
 - (10). Of personal property in general.
 - (11). In sale of personal property.
 - (12). In chattel mortgage.
 - (13). Of debt or obligation collateral to security.
461. Showing intent of parties as to subject-matter.
 - (1). In general.
 - (2). In construction of deeds in general.
 - (3). In description of property.
 - (4). In extent or interest conveyed.
 - (5). In reservations or exceptions.
462. Showing purpose of writing.
463. Showing mode of performance of obligation.

**(E) SHOWING DISCHARGE OR PERFORMANCE
OF OBLIGATION.**

464. Grounds for admission of extrinsic evidence.
465. Agreement as to performance or enforcement.
466. Release or other discharge without performance.
467. Estoppel or waiver.
468. Performance.
469. Payment.

XII. OPINION EVIDENCE.

**(A) CONCLUSIONS AND OPINIONS
OF WITNESSES IN GENERAL.**

470. Grounds for admission.
471. Conclusions and matters of opinion or facts.
 - (1). In general.
 - (2). Opinions and conclusions in general.
 - (3). Facts in general.
 - (4). Reasons given for other statements.
 - (5). Conversations in general.
 - (6). Conversations concerning contracts.
 - (7). Meaning of letters.
 - (8). Knowledge of other person.
 - (9). Motive and intent.
 - (10). Ability to see or hear.
 - (11). Knowledge of witness.
 - (12). Personal identity and characteristics.
 - (13). Bodily appearance or condition.
 - (14). Mental condition or capacity.
 - (15). Pecuniary condition.
 - (16). Handwriting.
 - (17). Due care and proper conduct.
 - (18). Customs and usages.
 - (19). Nature, condition, and relation of objects.
 - (20). Value.
 - (21). Quantity, space, or distance.
 - (22). Time.
 - (23). Rate of speed.
 - (24). Cause and effect.
 - (25). Performance or breach of contract.
 - (26). Title and ownership.
 - (27). Possession.
 - (28). Contractual relation.
 - (29). Construction and effect of contracts or instruments.
 - (30). Agency in general.
 - (31). Authority.
 - (32). Partnership.
 - (33). Abandonment.
 - (34). Indebtedness.
 - (35). Damages.
472. Matters directly in issue.

157. EVIDENCE

XII. OPINION EVIDENCE.(Cont'd)

- (1). In general.
- (2). Damages.
- (3). Performance or breach of contract.
- (4). Due care and proper conduct.
- (5). Sufficiency of appliances and machinery.
- (6). Ownership.
- (7). Motive and intent.
- (8). Mental condition or capacity.
- (9). Nature, condition, and relation of objects.
- (10). Value.
- (11). Cause and effect.
473. Inferences or impressions from collective facts.
474. Special knowledge as to subject-matter.
 - (1). In general.
 - (2). Personal identity and age.
 - (3). Bodily condition.
 - (4). Mental condition or capacity.
 - (5). Quantity or capacity.
 - (6). Due care and proper conduct in general.
 - (7). Operation of railroad and street railroad cars and other vehicles in general.
 - (8). Speed.
 - (9). Space or distance.
 - (10). Dangerous character of property or business.
 - (11). Cause and effect.
 - (12). Quality.
 - (13). Pecuniary condition.
 - (14). Handwriting.
 - (15). Nature, condition, and relation of objects.
 - (16). Value in general.
 - (17). Value of services.
 - (18). Value of real property.
 - (19). Value of personal property.
 - (20). Damages.
- 474.5. Subjects of opinion evidence in general.
475. Personal identity and characteristics.
476. Age.
477. Bodily appearance or condition.
 - (1). In general.

XII. OPINION EVIDENCE.(Cont'd)

- (2). Physical condition.
- (3). Nature or extent of personal injuries.
- (4). Pain.
- (5). Condition of animal.
478. Mental condition or capacity.
 - (1). In general.
 - (2). Undue influence.
 - (3). Intoxication.
479. Pecuniary condition.
480. Handwriting.
481. Due care and proper conduct.
 - (1). In general.
 - (2). Due care of person injured.
 - (3). Operation of railroads.
 - (4). Fires.
482. Custom or usage.
483. Nature, condition, and relation of objects.
 - (1). In general.
 - (2). Land.
 - (3). Railroad track.
 - (4). Highway or turnpike.
 - (5). Bridge.
 - (6). Sidewalk.
 - (7). Weight.
484. Quantity.
485. Value.
486. — In general.
487. — Services.
488. — Real property.
489. — Personal property.
490. Space or distance.
491. Time.
492. Rate of speed.
493. Cause and effect.
494. Damages.
495. — In general.
496. — Injuries to the person.
497. — Injuries to property.
498. — Breach of contract.
- 498.5. Determination of question of competency.
499. Examination of witnesses.
- 499.1. — In general.
500. — Testimony in general.
501. — Facts forming basis of opinion.
 - (1). In general.

157. EVIDENCE

XII. OPINION EVIDENCE.(Cont'd)

- (2). Bodily condition.
- (3). Mental condition or capacity.
- (4). Pecuniary condition.
- (5). Due care and proper conduct.
- (6). Condition of objects.
- (7). Value.
- (8). Time.
- (9). Cause and effect.
- (10). Damages.
- 502. — Cross-examination and re-examination.
- 503. Corroboration.
- (B) SUBJECTS OF EXPERT TESTIMONY.**
- 505. Matters of opinion or facts.
- 506. Matters directly in issue.
- 507. Matters of common knowledge or observation.
- 508. Matters involving scientific or other special knowledge in general.
- 509. Bodily condition.
- 510. Mental condition or capacity.
- 511. Handwriting.
- 512. Due care and proper conduct in general.
- 513. Construction and repair of structures, machinery, and appliances.
 - (1). In general.
 - (2). Buildings in general.
 - (3). Pulleys, derricks, and cranes.
 - (4). Sawmills.
 - (5). Elevators.
 - (6). Railroads in general.
 - (7). Street railroads.
 - (8). Highways, streets, and sidewalks.
 - (9). Bridges.
 - (10). Telegraphs and telephones.
 - (11). Mines.
- 514. Management and operation of vehicles, machinery, and appliances.
 - (1). In general.
 - (2). Vehicles.
 - (3). Railroads in general.
 - (4). Street railroads.
- 515. Conduct of business.
- 516. Custom or usage.
- 517. Laws of other states or countries.
- 518. Construction of written instruments.

XII. OPINION EVIDENCE.(Cont'd)

- 519. Nature, condition, and relation of objects.
- 520. Quantity or capacity.
- 521. Value.
- 522. — In general.
- 523. — Services.
- 524. — Real property.
- 525. — Personal property.
- 526. Cause and effect.
- 527. — In general.
- 528. — Injuries to the person.
 - (.5). In general.
 - (1). Cause.
 - (2). Effect.
- 529. — Injuries to property.
- 530. Damages.
- 531. — In general.
- 532. — Injuries to the person.
- 533. — Injuries to property.
- 534. — Breach of contract.
- (C) COMPETENCY OF EXPERTS.**
- 534.5. In general.
- 535. Necessity of qualification.
- 535.5. Disqualification; bias or conflict of interest.
- 536. Knowledge, experience, and skill in general.
- 537. Bodily and mental condition.
- 538. Due care and proper conduct in general.
- 539. Machinery and mechanical devices and appliances.
- 539.5. Construction and operation of railroads.
 - (1). In general.
 - (2). Distance within which car or train may be stopped.
 - (3). Speed.
- 540. Conduct of business, custom, or usage.
- 541. Laws of other states or countries.
- 542. Physical facts.
- 543. Value.
 - (1). In general.
 - (2). Services.
 - (3). Real property.
 - (4). Personal property.
- 543.5. Damages.
- 544. Cause and effect.

157. EVIDENCE

XII. OPINION EVIDENCE.(Cont'd)

- 545. Preliminary evidence as to competency.
- 546. Determination of question of competency.

(D) EXAMINATION OF EXPERTS.

- 547. Mode of examination in general.
- 547.5. Certainty of testimony; probability, or possibility.
- 548. Questions and answers based on personal knowledge of expert.
- 549. Questions and answers based on facts testified to by expert.
- 550. Questions and answers based on testimony of others.
 - (1). In general.
 - (2). Medical experts.
- 551. Hypothetical questions and answers.
- 552. — In general.
- 553. — Form and sufficiency of questions.
 - (1). In general.
 - (2). Facts which must be included.
 - (3). Facts which may be assumed.
 - (4). Support of facts by evidence.
- 554. — Scope and sufficiency of answers.
- 555. Basis of opinion.
 - 555.1. — In general.
 - 555.2. — Necessity and sufficiency.
 - 555.3. — Disclosure, necessity and right.
 - 555.4. — Sources of data.
 - (1). In general.
 - (2). Speculation, guess, or conjecture.
 - (3). Hearsay or evidence otherwise incompetent.
 - (4). Records or reports.
 - (5). Opinions of others.
 - (6). Examination of objects or premises.
 - 555.5. — Cause and effect.
 - 555.6. — Value.
 - (1). In general.
 - (2). Real property in general.
 - (3). Property remaining after condemnation; severance damages.
 - (4). Access.
 - (5). Improvements; reproduction cost.
 - (6). Capitalization of income; rents.
 - (7). Use of property; zoning considerations.

XII. OPINION EVIDENCE.(Cont'd)

- (8). Separate parcels; acreage or footage valuations.
 - (9). Minerals, trees, or timber.
 - (10). Comparable sales or values.
 - 555.7. — Due care and proper conduct.
 - 555.8. — Automobile cases.
 - (1). In general.
 - (2). Speed.
 - 555.9. — Damages.
 - 555.10. — Medical testimony.
 - 556. References to authorities on subject.
 - 557. Experiments and results thereof.
 - 558. Cross-examination.
 - (1). In general.
 - (2). Control and discretion of court.
 - (3). Limitation to subjects of direct examination.
 - (4). Irrelevant, collateral, or immaterial matters.
 - (5). Facts which may be assumed.
 - (6). Facts unsupported by evidence.
 - (7). Discrediting witness or disparaging testimony in general.
 - (8). Testing knowledge or competency of witness.
 - (9). Facts forming basis of opinion.
 - (10). Experiments and results thereof.
 - (11). Reference to authorities on subject.
 - 558.1. Re-examination.
 - 559. Corroboration.
 - 560. Contradiction and impeachment.
- #### (E) COMPARISON OF HANDWRITING.
- 561. Grounds for allowing comparison.
 - 562. Writings to be proved.
 - 563. Competency of expert.
 - 564. Standard of comparison.
 - (1). In general.
 - (2). Genuineness.
 - (3). Papers in evidence or relevant to issues.
 - (4). Papers belonging to record.
 - 565. Mode of making comparison.
 - 566. Examination of expert.
 - 567. Cross-examination.

158. EXCEPTIONS, BILL OF

(F) EFFECT OF OPINION EVIDENCE.

- 568. Opinions of witnesses in general.
 - (1). In general.
 - (2). Mental condition or capacity.
 - (3). Handwriting.
 - (4). Value.
 - (5). Space or distance.
 - (6). Rate of speed.
 - (7). Damages.
- 569. Testimony of experts.
- 570. — In general.
- 571. — Nature of subject.
 - (1). In general.
 - (2). Mental condition or capacity.
 - (3). Due care and proper conduct.
 - (4). Laws of other states or countries.
 - (5). Construction of written instruments.
 - (6). Nature, condition, and relation of objects.
 - (7). Value.
 - (8). Rate of speed.
 - (9). Cause and effect.
 - (10). Damages.
- 572. — Knowledge or skill of expert.
- 573. Comparison of handwriting.
- 574. Conflict with other evidence.

XIII. EVIDENCE AT FORMER TRIAL OR IN OTHER PROCEEDING.

- 575. Grounds for admission in general.
- 576. Death or disability of witness.
- 577. Absence of witness.
- 577.5. Nature of former proceeding.
- 578. Opportunity for cross-examination.
- 579. Identity of issues.
- 580. Identity of parties.
- 581. Preliminary evidence.
- 582. Mode of proof.
 - (1). In general.
 - (2). Testimony of witnesses.
 - (3). Minutes and notes of testimony.
 - (4). Bills of exceptions, statements of facts, etc.
- 583. Effect.

XIV. WEIGHT AND SUFFICIENCY.

- 584. Weight and conclusiveness in general.
 - (1). In general.

XIV. WEIGHT AND SUFFICIENCY.(Cont'd)

- (2). Depositions.
 - (3). Number of witnesses.
- 585. Statutory provisions.
- 586. Positive and negative evidence.
 - (.5). In general.
 - (1). Nature.
 - (2). Effect of negative testimony.
 - (3). Weight in general.
- 587. Circumstantial evidence.
- 588. Credibility of witnesses in general.
- 589. Testimony of party.
- 590. Testimony of interested persons.
- 591. Conclusiveness of evidence on party introducing it.
- 592. Evidence introduced by adverse party.
- 593. Evidence improperly admitted.
- 594. Uncontroverted evidence.
- 595. Inferences from evidence.
- 596. Degree of proof in general.
 - (1). In general.
 - (2). In civil actions to recover statutory penalties or involving criminal offense.
 - (3). Parol evidence to change writing.
- 597. Sufficiency to support verdict or finding.
- 598. Preponderance of evidence.
 - (1). In general.
 - (2). Testimony of parties.
- 599. Elements of cause of action or claim.
- 600. Matters of defense and rebuttal.
- 601. Particular facts or issues.
 - (1). In general.
 - (2). Execution of written instrument.
 - (3). Indebtedness.
 - (4). Value.
 - (5). Identity.

158. EXCEPTIONS, BILL OF

SUBJECTS INCLUDED

Statements in writing of exceptions taken to rulings or other action of the court at trials of civil causes, required for correction of errors at such trials

158. EXCEPTIONS, BILL OF

Nature and scope of bills of exceptions in general

In what cases and as to what objections such bills are available

Requisites, contents, making and filing of such bills, and proceedings to compel settlement, signing, sealing and filing thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty, exceptions in, see ADMIRALTY

Appeals or writs of error, necessity of use of exceptions, hearing of exceptions in first instance by appellate court, and review of decisions relating to making bills of exceptions, see APPEAL AND ERROR, FEDERAL COURTS

Criminal prosecutions, exceptions in, see CRIMINAL LAW

Equity, exceptions to pleadings or other proceedings, see EQUITY

New trial, necessity and use of exceptions on motions for, see NEW TRIAL

Pleading, exceptions as mode of testing sufficiency, see PLEADING

Trial, taking and noting exceptions, see TRIAL

I. NATURE, FORM, AND CONTENTS IN GENERAL, ¶1-30.

II. SETTLEMENT, SIGNING, AND FILING, ¶31-61.

I. NATURE, FORM, AND CONTENTS IN GENERAL.

1. Nature and purpose of remedy in general.
2. Statutory provisions.
3. Actions and proceedings in which bill is authorized.
4. Matters subject to exception.
5. Right to make bill.
6. Scope and contents of bill in general.
7. Setting forth errors or irregularities.
8. Setting forth objections, rulings, and exceptions.
9. Setting forth proceedings not shown by record.
10. Stating facts not shown by record.
11. Incorporating evidence.
 - 11.1. — In general.
12. — Necessity.

I. NATURE, FORM, AND CONTENTS IN GENERAL.(Cont'd)

13. — Setting forth evidence in general.
14. — Stenographer's report.
16. — Abridgment.
17. Incorporating evidence excluded.
18. Incorporating instructions given.
19. Incorporating instructions refused.
20. Form and arrangement of bill.
21. Insertion of documents.
22. — In general.
23. — Skeleton bill.
24. Number of bills.
25. Joinder of parties in same bill.
26. Construction of bill.
27. Operation and effect of bill.
28. Use of same bill in different proceedings.
29. Effect on bill of motion for new trial.
30. Exceptions pendente lite.

II. SETTLEMENT, SIGNING, AND FILING.

31. Necessity of allowance or settlement.
32. Authority to allow or settle.
 - (1). In general.
 - (2). Judge presiding or making ruling.
 - (3). Effect of judge becoming incapacitated or ceasing to hold office.
 - (4). Authority of clerk.
33. Duty to prepare bill.
34. Parties participating.
35. Time for presentation, allowance, and filing.
36. — In general.
 - (1). In general.
 - (2). In vacation.
 - (3). Effect of motion for new trial.
37. — At or after trial.
38. — During or after term.
39. — Time prescribed or allowed.
 - (5). In general.
 - (1). Time prescribed by statute or rule of court.
 - (2). Time allowed by order of court.
40. — Extension of time.
 - (1). In general.
 - (2). Authority to order extension.
 - (3). Notice of application.
 - (4). Time for allowance.
 - (5). Grounds for extension.

159. EXCHANGE OF PROPERTY

II. SETTLEMENT, SIGNING, AND FILING.(Cont'd)

- (6). Showing extension in bill.
- (7). By stipulation.
- 41. — Compliance with requirements.
 - (1). In general.
 - (2). Presentation in time and delay by judge.
 - (3). Perfecting in time and delay in filing.
 - (4). Delay caused by opposite party.
 - (5). Commencement of time.
 - (6). Showing compliance.
- 42. — Waiver of objections to delay.
- 43. — Presentation and allowance after expiration of time.
 - (1). In general.
 - (2). Excuses for delay.
- 44. — Allowance and filing nunc pro tunc.
- 45. Preparation and requisites of proposed bill.
- 46. Submission or service of proposed bill.
- 47. Proposed amendments or objections.
- 48. Notice of settlement.
- 49. Stipulations as to allowance or settlement.
- 50. Presentation for allowance or settlement.
- 51. Allowance or settlement by judge or other officer.
- 52. Resettlement.
- 53. Compelling allowance or settlement.
 - (1). In general.
 - (2). Time for taking proceedings.
 - (3). Mandamus.
 - (3.1). — In general.
 - (4). — Grounds for allowance.
 - (5). — Defenses and objections to allowance.
 - (6). — Petition.
 - (7). — Hearing, decision and relief.
- 54. Procuring signatures or affidavits of by-standers.
- 55. Proceedings to establish exceptions.
 - (1). In general.
 - (2). Time for taking proceedings and notice.
 - (3). Petition.
 - (4). Proceedings, hearing, and decision.
- 56. Certificate, signature, and seal of judge.
 - (.5). In general.

II. SETTLEMENT, SIGNING, AND FILING.(Cont'd)

- (1). Necessity for certificate.
- (2). Form and requisites of certificate.
- (3). Construction and operation.
- (4). Signature and seal.
- 57. Filing.
- 58. Service.
 - (1). In general.
 - (2). Time for service.
 - (3). Parties to be served.
 - (4). Acknowledgment and proof of service.
- 59. Amendment or correction.
 - (1). In general.
 - (2). Proceedings to establish.
 - (3). By agreement of parties.
 - (4). Time for amendment or correction.
 - (5). Compelling amendment.
 - (6). Supplemental bill.
- 60. Quashing or striking from files.
 - (.5). In general.
 - (1). Grounds.
 - (2). Time for motion.
 - (3). Motion.
- 61. Exceptions pendente lite.

159. EXCHANGE OF PROPERTY

SUBJECTS INCLUDED

Mutual transfers of ownership of property by way of interchange without fixed price or valuation

Contracts for such transfers, executory or executed

Rights and liabilities of parties to such transfers or contracts

Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conveyances of land by way of exchange, see
DEEDS

159. EXCHANGE OF PROPERTY

1. Nature and elements in general.
2. Exchange of real property.
 - 2.1. — In general.
3. — Requisites and validity.
 - (1). In general.
 - (2). Estoppel or waiver.
4. — Construction of contract.
5. — Modification or rescission.
6. — Performance of contract.
7. — Rights and liabilities of parties.
8. — Remedies.
 - (1). In general.
 - (2). Liens.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Damages.
9. Exchange of personal property.
10. — In general.
11. — Rescission.
12. — Warranties.
13. — Remedies.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Evidence.
 - (4). Trial.
 - (5). Damages.
14. — Conditional exchange.

160. EXCHANGES

SUBJECTS INCLUDED

Bodies formed by the incorporation or association of persons engaged in business of the same nature for the purpose of facilitating and regulating the transaction of such business among the members

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Alternative dispute resolution and arbitration, see ALTERNATIVE DISPUTE RESOLUTION

Commodity futures trading regulation, see COMMODITY FUTURES TRADING REGULATION

Corporations or unincorporated associations in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS, ASSOCIATIONS

Execution, liability of seats or memberships in exchanges to levy of, see CREDITORS' REMEDIES

Securities exchanges, regulation, see SECURITIES REGULATION

Subject matter formerly classified to this topic has been used in creating the topics COMMODITY FUTURES TRADING REGULATION and SECURITIES REGULATION. For the present classification of a particular case, see the Table of Cases.

1. Nature and status in general.
2. Statutory provisions.
3. Incorporation and organization.
4. Constitution, by-laws, and rules.
5. Membership in general.
 - (1). In general.
 - (2). Expulsion or suspension of members.
 - (2.10). Disciplinary proceedings.
 - (3). Reinstatement of members.
6. Stock.
7. Property in seat or membership, and transfer thereof.
8. Dues, fines, and assessments.
9. Mutual dealings and liabilities of members.
 - 9.1. — In general.
 - 9.20. — Members' stockholders or partners; allied members.
10. Officers and committees.
 - 10.10. Market specialists.
11. Regulation by exchanges of members' dealings with nonmembers.
 - (1). In general.
 - (2). Right of action for violation of rules.
 - (3). Commissions or other charges.
 - (4). Supervision of accounts; "know your customer" rule.
 - (5). Transfer of accounts.
 - (6). Credit or margin transactions.
 - (7). Liquidation of customers' accounts or assets.
 - (8). Insolvency or liquidation of members.

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- (9). Rights and liabilities of members' employees.
- (10). Proceedings.
- (13). Evidence and fact questions.
- 12. Rights and liabilities of exchanges as to non-members.
- 12.1. — In general.
- 12.10. — Duty to supervise members or enforce rules.
- 12.20. — Evidence and fact questions.
- 13. Quotations of prices and transactions.
- 13.10. Listing and delisting of items traded; suspension of trading.
- 13.20. Tobacco exchanges.
- 14. Actions by or against exchanges.
- 15. Dissolution.

162. EXECUTORS AND ADMINISTRATORS

SUBJECTS INCLUDED

General administration of decedents' estates under testamentary or judicial appointment

Rights, powers, duties and liabilities of executors or administrators in respect of the collection, management and disposition of their testators' or intestates' estates

Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Community property, administration of, see MARRIAGE AND COHABITATION

Partnership affairs, settlement by surviving partners or by statutory partnership administrators, see PARTNERSHIP

Rights of devisees, legatees, heirs and next of kin, see DESCENT AND DISTRIBUTION, WILLS

Taxation of estates, inheritance or succession, see INTERNAL REVENUE, TAXATION

Testamentary powers and trusts, see POWERS, TRUSTS, WILLS

Wills, probate, establishment, interpretation and effect, see WILLS

- I. ADMINISTRATION IN GENERAL, ¶1-7.
- II. APPOINTMENT, QUALIFICATION, AND TENURE, ¶8-37.
- III. ASSETS OF ESTATE, ¶38-73.
 - (A) IN GENERAL, ¶38-61.
 - (B) APPRAISAL AND INVENTORY, ¶62-73.
- IV. COLLECTION AND MANAGEMENT OF ESTATE, ¶74-172.
 - (A) IN GENERAL, ¶74-128.
 - (B) REAL PROPERTY AND INTERESTS THEREIN, ¶129-152.
 - (C) PERSONAL PROPERTY, ¶153-172.
- V. ALLOWANCES TO SURVIVING WIFE, HUSBAND, OR CHILDREN, ¶173-201.
- VI. CLAIMS AGAINST ESTATE, ¶202-287.
 - (A) LIABILITIES OF ESTATE, ¶202-221.
 - (B) PRESENTATION, ¶222-233.
 - (C) ALLOWANCE, ¶234-241.
 - (D) DISPUTED CLAIMS, ¶242-257.
 - (E) PRIORITIES AND PAYMENT, ¶258-287.
- VII. DISTRIBUTION OF ESTATE, ¶288-318.
- VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT, ¶319-407.
 - (A) WHEN AUTHORIZED, ¶319-331.
 - (B) APPLICATION AND ORDER, ¶332-359.
 - (C) SALE, ¶360-392.
 - (D) CONVEYANCE, ¶393-399.
 - (E) PROCEEDS, ¶400-407.
- IX. INSOLVENT ESTATES, ¶408-419.
- X. ACTIONS, ¶420-457.
- XI. ACCOUNTING AND SETTLEMENT, ¶458-516.
 - (A) DUTY TO ACCOUNT, ¶458-467.
 - (B) PROCEEDINGS FOR ACCOUNTING, ¶468-474.
 - (C) CHARGES AND CREDITS, ¶475-487.
 - (D) COMPENSATION, ¶488-501.
 - (E) STATING, SETTLING, OPENING, AND REVIEW, ¶502-516.
- XII. FOREIGN AND ANCILLARY ADMINISTRATION, ¶517-526.
- XIII. LIABILITIES ON ADMINISTRATION BONDS, ¶527-537.
- XIV. EXECUTORS DE SON TORT, ¶538-544.

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I. ADMINISTRATION IN GENERAL.

1. Nature of the trust.
2. What law governs.
3. Necessity of administration.
 - (1). In general.
 - (2). Estate of husband or wife.
 - (3). Debts necessitating administration.
 - (4). Estate free from indebtedness.
 - (5). Proceedings to determine necessity.
4. Fact of death.
5. Fact of intestacy.
6. Intermeddling in administration.
7. Withdrawing estate from administration.

II. APPOINTMENT, QUALIFICATION, AND TENURE.

8. Jurisdiction of courts.
9. — In general.
10. — Domicile of decedent.
11. — Existence of assets.
12. — Situs of assets.
13. — Particular courts.
14. Appointment of executor.
15. Competency of person named as executor.
16. Acceptance or renunciation by executor.
17. Right to appointment as administrator.
 - (1). In general.
 - (2). Heirs and next of kin, or their representatives, in general.
 - (3). Husband or wife or their representatives.
 - (4). Guardian of infants or insane next of kin.
 - (5). Preference between kindred of same degree.
 - (6). Creditors.
 - (7). Nomination of third person by person within permissive degree of consanguinity.
18. Qualifications of administrator.
19. Renunciation of right to administer.
20. Proceedings for appointment.
 - (5). In general.
 - (1). Nature of proceeding.
 - (2). Time for application.
 - (3). Persons entitled to make application.

II. APPOINTMENT, QUALIFICATION, AND TENURE.(Cont'd)

- (4). Notice.
- (4.5). Parties.
- (5). Petition or bill.
- (5.5). Plea or answer.
- (6). Objections to appointment.
- (7). Evidence.
- (8). Trial or hearing.
- (8.5). Vacation appointment.
- (9). Order of appointment.
- (10). Review.
- (11). Abandonment of application.
- (12). Costs.
21. Administrator with will annexed.
 - (1). In general.
 - (2). Proceedings for appointment.
22. Temporary or special appointment.
 - (1). In general.
 - (2). Grounds for appointment.
 - (3). Proceedings for appointment.
23. Second or additional appointment.
24. Public administrators.
25. Acceptance and oath of office.
26. Bond.
 - (5). In general.
 - (1). Of executors.
 - (2). Of administrators.
27. Issuance of letters.
28. Evidence of appointment or authority.
29. Operation and effect of appointment.
 - (1). In general.
 - (2). Collateral attack in general.
 - (3). Want of jurisdiction.
 - (4). Errors and irregularities.
 - (5). Matters concluded.
 - (6). Presumptions.
30. Failure to qualify or act.
31. Termination of authority in general.
32. Revocation of letters.
 - (5). In general.
 - (1). Grounds for or objections to revocation.
 - (2). Application and proceedings thereon.
33. Resignation and discharge.
34. Disqualification.
35. Removal.
 - (5). In general.

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II. APPOINTMENT, QUALIFICATION, AND TENURE.(Cont'd)

- (1). Grounds in general.
 - (2). Hostility or adverse interest.
 - (3). Fraud.
 - (4). Misconduct respecting sale of property of estate.
 - (5). Failure to account.
 - (6). Change of residence or absence from state.
 - (7). Insolvency.
 - (8). Waste, negligence, or mismanagement.
 - (8.5). Grounds for refusing to remove.
 - (9). Coexecutors and coadministrators.
 - (10). Nature and form of proceeding.
 - (10.5). Defenses.
 - (11). Persons entitled to apply.
 - (12). Jurisdiction.
 - (12.5). Time for application.
 - (13). Notice.
 - (13.5). Parties.
 - (14). Pleading.
 - (15). Evidence.
 - (16). Trial or hearing.
 - (17). Order.
 - (18). Costs.
 - (19). Review.
 - (20). Operation and effect.
 - (21). Setting aside removal.
36. Death.
37. Administrators de bonis non.
- (1). In general.
 - (2). Grounds for appointment.
 - (3). Right to appointment.
 - (4). Jurisdiction and proceedings.
 - (5). Operation and effect of appointment.

III. ASSETS OF ESTATE.

(A) IN GENERAL.

38. Property constituting assets in general.
39. Real property and estates and interests therein.
40. Proceeds of sale of real property.
41. Rents and profits.
42. Crops and products of land.
43. Personal property in general.
44. Interests in partnerships.

III. ASSETS OF ESTATE.(Cont'd)

45. Trust estates and other equitable estates and interests.
46. Interests under insurance policies.
47. Legacies and distributive shares.
48. Debts and rights of action.
49. — In general.
50. — Debts due from executor or administrator.
51. — Right of action for death of decedent.
52. — Evidence of indebtedness.
53. Exempt property.
54. Ownership of property at time of death.
55. — In general.
56. — Property disposed of by decedent.
57. — Property fraudulently conveyed.
58. — Property accruing after death.
59. — Evidence of ownership.
60. Foreign assets.
61. Legal and equitable assets.

(B) APPRAISAL AND INVENTORY.

62. In general.
63. Necessity and purpose.
64. Time for making.
65. Proceedings to compel.
66. Property to be included.
67. Making appraisal.
68. Requisites and sufficiency of inventory.
69. Defects and objections.
70. Amendment and correction.
71. Additional or supplemental inventory.
72. Operation and effect.
73. Failure to make.

IV. COLLECTION AND MANAGEMENT OF ESTATE.

(A) IN GENERAL.

74. Representation of decedent.
75. Representation of creditors and distributees.
76. Jurisdiction of courts.
77. Powers before issue of letters or qualification.
78. Powers pending contest of will.
79. Powers pending appeal from appointment.
80. Delegation of powers.

162. EXECUTORS AND ADMINISTRATORS

IV. COLLECTION AND MANAGEMENT OF ESTATE.(Cont'd)

- 81. Execution of provisions of will in general.
- 82. Instructions of court.
- 83. Discovery and collection of assets.
- 83.1. — In general.
- 84. — Authority and duty in general.
- 85. — Proceedings for discovery of assets.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (1.5). Scope of inquiry and questions considered.
 - (2). Persons by or against whom proceedings may be brought.
 - (3). Property as to which discovery may be obtained.
 - (4). Jurisdiction.
 - (4.5). Parties and process or notice.
 - (5). Petition, affidavit, and interrogatories.
 - (5.1). Evidence.
 - (5.5). Answer.
 - (6). Hearing and examination.
 - (7). Dismissal.
 - (8). Judgment and review.
 - (9). Proceedings against executor or administrator.
- 86. — Collection and protection of assets in general.
 - (.5). In general.
 - (1). Authority and duty in general.
 - (2). Property in possession of or claimed by heirs, distributees, and others.
 - (3). Payments to executor or administrator.
 - (4). Extending time for payment.
- 87. — Compromise or release of claims.
- 88. — Debts due from executor or administrator.
- 89. — Failure to collect.
- 90. Custody and management of estate.
- 91. — In general.
- 92. — Performance of decedent's obligations.
- 93. — Continuance of decedent's business.
 - (1). In general.
 - (2). Provisions of will.
- 94. Partnership.
- 95. Contracts.

IV. COLLECTION AND MANAGEMENT OF ESTATE.(Cont'd)

- 96. — In general.
- 97. — Services.
- 98. — Borrowing money.
- 99. — Bills and notes.
- 100. — Guaranty or suretyship.
- 101. Investments.
- 102. — In general.
- 103. — Loss or depreciation.
- 104. Interest on funds of estate.
 - (1). In general.
 - (2). Failure to invest funds or deposit them in interest-paying bank.
 - (3). Mingling and using funds for individual benefit.
 - (4). Delay in settlement of estate.
 - (5). Assets reserved to meet contingencies.
 - (6). Rate and computation of interest.
- 105. Deposits.
- 106. Loans.
- 107. Gifts.
- 108. Expenditures.
- 109. — In general.
 - (1). In general.
 - (2). Funeral expenses, tombstones, and burial places.
 - (3). Services.
 - (4). Traveling expenses.
 - (5). Procuring bond.
- 110. — Taxes.
- 111. — Counsel fees and costs.
 - (1). In general.
 - (2). Procuring appointment as administrator.
 - (3). Probate and contest of will.
 - (4). Resisting claims against estate.
 - (5). Services that should have been performed by executor or administrator.
 - (6). Amount of fees.
 - (7). Separate counsel to coexecutors or coadministrators.
 - (8). Legal proceedings made necessary by acts of executor or administrator.
 - (9). Individual interest of executor or administrator in proceeding.
- 112. Submission to arbitration.

162. EXECUTORS AND ADMINISTRATORS

IV. COLLECTION AND MANAGEMENT OF ESTATE.(Cont'd)

- 113. Confession of judgment.
- 114. Estoppel.
- 115. Individual interest in transactions.
- 116. Fraud.
- 117. Waste, conversion, or embezzlement of assets.
- 118. Loss of assets.
- 119. Torts.
- 120. Administrators de bonis non.
 - (.5). In general.
 - (1). Powers of successor of administrator.
 - (2). Powers and liabilities of successor of executor in general.
 - (3). Power of sale under will.
- 121. Administrators with will annexed.
 - (1). In general.
 - (2). Power of sale under will.
- 122. Temporary or special administrators.
 - (.5). In general.
 - (1). Authority and duty in general.
 - (2). Collection and disposition of assets.
 - (3). Expenditures.
- 123. Coexecutors and coadministrators.
- 123.1. — In general.
- 124. — Joint or several authority.
- 125. — Joint or several liability.
- 126. — Acting executor or administrator.
- 127. — Surviving executor or administrator.
- 128. Representatives of deceased executors or administrators.

(B) REAL PROPERTY AND INTERESTS THEREIN.

- 129. Title and authority in general.
 - (1). In general.
 - (2). Actions for trespass and waste.
 - (3). Actions to quiet or remove cloud from title.
- 130. Possession and use.
 - (1). In general.
 - (2). Actions to recover possession.
- 131. Rents and profits.
- 132. Repairs and improvements.
- 133. Mortgaged and incumbered property.
- 134. Leaseholds of decedent.

IV. COLLECTION AND MANAGEMENT OF ESTATE.(Cont'd)

- 135. Contracts of decedent.
- 136. Sale.
 - 136.1. — In general.
- 137. — Authority and duty in general.
- 138. — Power under will.
 - (1). In general.
 - (2). Implied power.
 - (3). Control by court.
 - (4). Purposes of sale.
 - (5). Who may exercise.
 - (6). Time for exercising.
 - (7). Property subject to sale.
 - (8). Duration and termination of power.
 - (9). Execution of power and confirmation of sale.
- 139. — Delegation of power.
- 140. — Time for making.
- 141. — Manner and conduct.
- 142. — Terms and conditions.
- 143. — Validity.
- 144. — Purchase by executor or administrator.
- 145. — Conveyance.
- 146. — Payment or recovery of purchase money.
- 147. — Application of proceeds.
- 148. — Title and rights of purchasers.
- 149. — Setting aside.
- 150. Lease.
- 151. Mortgage.
- 152. Property acquired by executor or administrator.

(C) PERSONAL PROPERTY.

- 153. Title and authority in general.
- 154. Possession and use.
- 155. Pledged and mortgaged property.
- 156. Contracts of decedent.
- 157. Sale.
 - 157.1. — In general.
- 158. — Authority and duty in general.
- 159. — Time for making.
- 160. — Manner and conduct.
- 161. — Terms and conditions.
- 162. — Validity.

162. EXECUTORS AND ADMINISTRATORS

IV. COLLECTION AND MANAGEMENT OF ESTATE.(Cont'd)

- 163. — Purchase by executor or administrator.
- 164. — Conveyance and transfer.
- 165. — Payment or recovery of price.
- 166. — Application of proceeds.
- 167. — Title and rights of purchasers.
- 168. — Setting aside.
- 169. Mortgage or pledge.
- 170. Indorsement and transfer of bills and notes.
- 171. Assignment and transfer of rights of action.
- 172. Property acquired by executor or administrator.

V. ALLOWANCES TO SURVIVING WIFE, HUSBAND, OR CHILDREN.

- 173. Nature and purpose in general.
- 174. Constitutional and statutory provisions.
- 175. Quarantine or other occupation or use of property.
- 176. Maintenance and support.
- 177. Specific articles.
- 178. Amount or value.
- 179. Additional to dower or other interest.
- 180. Persons entitled.
- 181. Property subject to allowance.
- 182. Priority over other claims.
- 183. Bar, waiver, or relinquishment.
- 184. — In general.
- 185. — Antenuptial or postnuptial agreement.
- 186. — Testamentary provisions.
- 187. — Separate estate or homestead.
- 188. — Misconduct, separation, or divorce.
- 189. — Relinquishment after death of decedent.
- 190. — Delay in making application.
- 191. Selection by persons entitled.
- 192. Setting apart by executors or administrators.
- 193. Setting apart by appraisers.
- 194. Allowance by court.
 - (1). In general.
 - (2). Jurisdiction.
 - (3). Parties and pleading.
 - (4). Objections and exceptions.
 - (5). Evidence.

V. ALLOWANCES TO SURVIVING WIFE, HUSBAND, OR CHILDREN.(Cont'd)

- (5.5). Trial and new trial.
- (6). Judgment or order.
- (7). Review.
- 195. Effect of allowance.
- 196. Increase or further allowance.
- 197. Decrease or revocation.
- 198. Deficiency.
- 199. Improper or excessive allowance.
- 200. Rights of creditors.
- 201. Rights of distributees or heirs.

VI. CLAIMS AGAINST ESTATE.

(A) LIABILITIES OF ESTATE.

- 202. Obligations of estate in general.
- 202.2. Contingent and unmatured claims.
- 202.4. Contracts in general.
- 202.5. Personal contracts.
- 202.10. Bills, notes, and checks.
- 202.15. Bonds, mortgages, and pledges.
- 203. Joint contracts.
- 204. Services rendered to decedent.
- 205. — In general.
- 205.1. — Amount of allowance.
- 206. — Persons in family relation.
 - (1). In general.
 - (2). Implied contracts.
 - (3). Express promise by decedent to make compensation.
 - (4). Amount of allowance.
- 207. Loans or advances to decedent.
- 208. Covenants of decedent.
- 209. Contracts of guaranty by decedent.
- 210. Agreements by decedent to make will.
- 210.5. Trust funds, claims for.
- 210.8. Debts payable after death.
- 211. Torts of decedent.
- 212. Taxes.
- 213. Claims barred by limitation.
- 213.5. Claims arising after death of decedent in general.
- 214. Funeral expenses.
- 215. Tombstones and monuments.
- 216. Services rendered to estate.
 - (1). In general.
 - (2). Services of attorneys.
- 217. Loans or advances to estate.
- 218. Expenses of administration.

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VI. CLAIMS AGAINST ESTATE.(Cont'd)

- 219. Claims of executors and administrators.
- 219.5. Domestic relations, claims arising out of.
- 219.6. — In general; contracts between husband and wife.
- 219.7. — Alimony and support.
 - (1). In general.
 - (2). Claims accruing after death.
- 219.8. — Support and maintenance furnished family by others.
- 219.9. Miscellaneous claims.
- 220. Claims purchased by persons interested in estate.
- 221. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (1.1). — In general.
 - (2). — Services rendered to decedent.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
 - (4.1). — In general.
 - (5). — Services rendered to decedent.
 - (6). — Loans and advances.
 - (7). — Agreements by decedent to make will or other conveyance of property.
 - (8). — Partnership transactions.
 - (9). — Obligation evidenced by written instrument.
 - (10). — Claims of executors and administrators.
- (B) PRESENTATION.
- 222. Necessity for presentation in general.
 - (1). In general.
 - (2). Presentation as condition precedent to continuing suit.
 - (3). Knowledge of executor or administrator of existence of debt.
- 223. Statutory provisions.
- 224. Claims which must be presented.
- 225. Time for presentation.
 - (1). In general.
 - (2). Computation of period of limitation in general.
 - (3). Contingent and unmatured claims.

VI. CLAIMS AGAINST ESTATE.(Cont'd)

- (4). Claims of executors and administrators.
- (5). Absence or nonresidence of claimant or personal representative.
- (6). Personal disabilities and privileges.
- (7). Extension of time.
- (8). Laches.
- (9). Claims not presented in time as claims against assets subsequently discovered or inventoried.
- 226. Notice to creditors.
- 227. Statement and verification of claim.
 - (.5). In general.
 - (1). Form, requisites, and sufficiency of claim.
 - (2). Filing or attaching instrument or account on which claim is based.
 - (3). Verification.
 - (4). Defects, objections, and waiver.
 - (5). Amendment.
 - (6). Issues, proof, and variance.
 - (7). Claims of executors and administrators.
- 228. Presentation and filing.
 - (1). In general.
 - (2). Persons who may present or file claims.
 - (3). Sufficiency of presentation or filing.
 - (3.5). Withdrawal of claims.
 - (4). Evidence.
 - (5). Defects, objections, and waiver.
- 229. Effect of presentation.
- 230. Failure to present.
- 231. — In general.
- 232. — Excuses.
- 233. — Relief.
- (C) ALLOWANCE.
- 234. Allowance by executors or administrators.
- 235. Allowance by commissioners.
- 236. Approval or allowance by court.
- 237. Order or decree.
- 238. Setting aside allowance or disallowance.
- 239. Review.

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VI. CLAIMS AGAINST ESTATE.(Cont'd)

- 240. Costs.
- 241. Effect of allowance or disallowance.
- (D) DISPUTED CLAIMS.
- 242. Contest of claims in general.
- 243. Statutory provisions.
- 244. Persons who may contest claims.
- 245. Objections and exceptions to claims.
- 246. Arbitration or reference.
- 247. Hearing by commissioners.
- 248. Trial by probate court.
- 248.1. — In general.
- 249. — Nature and form of proceeding.
- 250. — Jurisdiction.
- 251. — Proceedings.
- 252. — Evidence.
- 253. — Hearing.
- 254. — Findings and decision.
- 255. Judgment.
- 256. Review.
 - (1). In general.
 - (2). Appealable orders.
 - (3). Right of review.
 - (4). Presentation in lower court or tribunal of grounds of review.
 - (5). Requisites and proceedings for perfecting appeal.
 - (6). Scope and extent of review.
 - (7). Amendments, additional proof, and trial of cause anew.
 - (8). Determination and disposition of cause.
- 257. Costs.

(E) PRIORITIES AND PAYMENT.

- 258. Authority and duty to make payment.
- 259. Statutory classification and order of payment.
- 260. — In general.
- 261. — Particular classes of claims.
- 262. — Proceedings for classification.
- 263. Rights of creditors to priority.
- 264. Secured claims.
 - (1). In general.
 - (2). Effect of allowance or presentation of claim.
- 265. Claims of executor or administrator.
- 266. Advances to pay claims.

VI. CLAIMS AGAINST ESTATE.(Cont'd)

- 267. Interest.
- 268. Attorney fees and expenses of creditors.
- 269. Compromises by creditors.
- 270. Property available for payment.
- 271. — In general.
- 272. — Personal and real property.
- 273. — Legal and equitable assets.
- 274. — Marshaling assets.
- 275. Mode and sufficiency of payment; set-off.
- 276. Effect of payment.
- 277. Time for making payment in general.
- 278. Payment before allowance or order.
- 279. Payment by mistake.
- 280. Overpayment.
- 281. Improper payments.
- 282. Failure to make payment.
- 283. Proceedings to enforce payment.
- 284. Deficiency of assets in hand.
- 285. Reservation of assets to meet contingencies.
- 286. Release by creditors.
- 287. Liability to refund.

VII. DISTRIBUTION OF ESTATE.

- 288. Authority and duty to make in general.
- 289. Priority of debts to legacies or distributive shares.
- 290. Admission of or charging with assets.
- 291. Assent to legacy or devise.
- 292. Executor as legatee.
- 293. Administrator as distributee.
- 294. Liabilities of legatee or distributee to estate.
- 295. Time for delivery or payment of legacy.
- 296. Time for making distribution.
- 297. Requirement of receipt or release.
- 298. Security from legatee for life.
- 299. Refunding bond or other indemnity.
- 300. Delivery of specific legacy.
- 301. Advances by executor or administrator.
- 302. Mode and sufficiency of payment.
- 303. — In general.
 - (1). In general.
 - (2). To whom payment may be made in general.
 - (3). Payment to county or state or into court.

162. EXECUTORS AND ADMINISTRATORS

VII. DISTRIBUTION OF ESTATE.(Cont'd)

- 304. — Legatees or distributees under disability.
 - 305. Evidence of payment.
 - 306. Payment of annuities.
 - 307. Effect of payment or distribution.
 - 308. Improper payment in general.
 - 309. Payment before order or decree.
 - 310. Overpayment.
 - 311. Payment to wrong person.
 - 312. Failure to make payment or distribution.
 - 313. Interest on legacies and distributive shares.
 - 314. Proceedings for payment or distribution.
 - (5). In general.
 - (1). Nature and form of remedy.
 - (2). Jurisdiction.
 - (3). Right to distribution and objection thereto.
 - (4). Citation or notice.
 - (5). Time of proceedings, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (6). Parties.
 - (7). Pleading.
 - (8). Evidence.
 - (9). Appointment and proceedings of auditor, commissioners, or distributors.
 - (10). Examination and settlement of account, and appraisal.
 - (11). Hearing and determination.
 - (12). Appeal.
 - (13). Costs and attorney fees.
315. Order or decree for distribution.
- 315.1. — In general; form and requisites; relief awarded.
- 315.2. — Entry of judgment.
- 315.3. — Amendment and correction.
- 315.4. — Opening and vacating.
- 315.5. — Construction and operation.
- 315.6. — Conclusiveness.
 - (1). In general.
 - (2). Matters concluded.
 - (3). Collateral attack.
- 315.7. — Execution and enforcement of decree.
- 315.8. — Interest on award.
- 315.9. — Order or decree for partial distribution.

VII. DISTRIBUTION OF ESTATE.(Cont'd)

- 316. Reservation of assets.
- 317. Restitution on reversal of order or decree.
- 318. Liability to refund on deficiency of assets.

VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.

(A) WHEN AUTHORIZED.

- 319. Nature of remedy.
- 320. Statutory provisions.
- 321. For purposes of administration in general.
- 322. For payment of debts.
 - 322.1. — In general.
- 323. — Necessity in general.
- 324. — Existence and validity of debts.
- 325. — Insufficiency of personalty.
- 326. For payment of legacies or distribution.
- 327. Effect of testamentary provisions.
- 328. Persons entitled to apply.
- 329. Property or interests subject to disposal.
 - (1). In general.
 - (2). Homestead.
- 330. Amount to be sold or otherwise disposed of.
- 331. Payment or security to prevent disposal of property.

(B) APPLICATION AND ORDER.

- 332. Form of proceeding.
- 333. Jurisdiction.
- 334. Time for application.
- 335. Parties.
- 336. Petition or other application.
- 337. Citation or notice.
- 338. Objections and exceptions.
- 339. Hearing of application in general.
- 340. Proof and contest of claims.
- 341. Determination as to sufficiency of personalty.
- 342. Account of administration.
- 343. Determination as to necessity for sale, mortgage, or lease.
- 344. Claims to property.
- 345. Order or decree.
 - 345.1. — In general.
- 346. — Requisites in general.

162. EXECUTORS AND ADMINISTRATORS

VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.(Cont'd)

- 347. — Description of property.
- 348. — Modification, amendment, or vacation.
- 349. — Operation and effect.
 - (1). In general.
 - (2). Collateral attack.
- 350. Oath.
- 351. Special bond for sale.
- 352. Special appointment to sell or convey.
- 353. Appraisal of property to be sold.
- 354. Second application.
- 355. Proceedings to compel application.
- 356. Actions for sale.
- 357. Restraining sale.
- 358. Review.
 - (5). In general.
 - (1). Nature and form of remedy and appellate jurisdiction.
 - (2). Persons entitled to review and decisions reviewable.
 - (3). Proceedings for and effect of appeal.
 - (4). Mode and extent of review, and determination and disposition of cause.
- 359. Failure to procure sale.

(C) SALE.

- 360. Authority and powers in making sale in general.
- 361. Statutory provisions.
- 362. Notice.
- 363. Manner and conduct.
- 364. Terms and conditions.
- 365. Persons who may purchase.
- 366. Bids or offers.
- 367. Validity in general.
- 368. Payment of purchase money.
- 369. Failure of bidder to complete purchase.
- 370. — In general.
- 371. — Resale.
- 372. — Liabilities of bidder.
- 373. — Actions on bids.
- 374. Report or return.
- 375. Confirmation.
- 376. Persons who may question validity.
- 377. Estoppel and ratification of invalid sale.

VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.(Cont'd)

- 378. Curative statutes.
- 379. Opening or vacating.
- 380. Actions to set aside.
 - (5). In general.
 - (1). Grounds of action and conditions precedent.
 - (1.5). Nature and form of remedy.
 - (2). Jurisdiction, limitations, and laches.
 - (2.5). Parties.
 - (3). Pleading and evidence.
 - (4). Trial, judgment, and review.
- 381. Effect of setting aside.
- 382. Resale on setting aside.
- 383. Collateral attack.
- 384. Operation and effect in general.
- 385. Effect on rights of creditors.
- 386. Rights of devisees and heirs.
- 387. Rights of surviving husband or wife, or their successors in interest.
- 388. Title and rights of purchasers and their privies.
 - (1). In general.
 - (2). What passes by sale in general.
 - (3). Rents, profits, crops, and timber.
 - (4). Caveat emptor and warranty.
 - (5). Bona fide purchasers.
 - (6). Remedies.
 - (7). When title passes.
- 389. Rights and remedies of purchasers on avoidance of sale.
- 390. Liabilities of purchasers.
- 391. Liabilities of executor or administrator.
- 392. Liabilities on bonds for sale.

(D) CONVEYANCE.

- 393. Necessity and nature in general.
- 394. Authority to make.
- 395. Right to conveyance.
- 396. Time for making.
- 397. Deed to purchaser.
- 398. Mortgage.
- 399. Lease.

(E) PROCEEDS.

- 400. Disposition in general.
- 401. Costs and expenses.

162. EXECUTORS AND ADMINISTRATORS

VIII. SALES AND CONVEYANCES UNDER ORDER OF COURT.(Cont'd)

- 402. Mortgages and other liens.
- 403. Payment of debts.
- 404. Right to surplus.
- 405. Surplus proceeds of sale on foreclosure paid into probate court.
- 406. Proceedings for distribution.
- 407. Liabilities of purchaser or mortgagee as to application of proceeds.

IX. INSOLVENT ESTATES.

- 408. Administration in general.
- 409. Grounds for declaration of insolvency.
- 410. Proceedings on reporting or declaring insolvency.
- 411. Effect of insolvency upon previous acts and proceedings.
- 412. Appointment and powers of commissioners.
- 413. Management of estate.
- 414. Sales and conveyances under order of court.
- 415. Presentation, proof, and allowance of claims.
- 416. Payment of claims.
- 417. Rights and remedies of creditors.
- 418. Distribution and settlement.
- 419. Review of proceedings.

X. ACTIONS.

- 420. Capacity to sue and be sued in general.
- 421. Nature and form.
- 422. Statutory provisions.
- 423. Actions by creditors and others interested in estate.
- 424. Rights of action between coexecutors or coadministrators.
- 425. Rights of action by executors or administrators.
- 426. — In general.
- 427. — Personal or representative capacity.
- 428. Rights of action against executors or administrators.
- 429. — In general.
- 430. — Personal or representative capacity.
- 431. Conditions precedent.
 - (1). In general.

X. ACTIONS.(Cont'd)

- (2). Presentation of claim to executor or administrator in general.
 - (3). Foreclosure of mortgage or other lien.
- 432. Defenses against executors or administrators.
- 433. Defenses by executors or administrators.
- 434. Set-off and counterclaim.
 - (.5). In general.
 - (1). In actions by executors and administrators.
 - (1.1). — In general.
 - (2). — As between debts arising before, and those accruing after death of decedent.
 - (3). — Legacy or distributive share.
 - (4). — Effect of insolvency of estate.
 - (5). — Presentation, proof, and demand as condition precedent to right of set-off.
 - (6). — Time of interposing.
 - (7). In actions against executors and administrators.
- 435. Jurisdiction.
- 436. Venue.
- 437. Time to sue, and limitations.
See also LIMITATION OF ACTIONS.
 - (.5). In general.
 - (1). Actions by executors or administrators.
 - (2). Time within which actions against executors or administrators are prohibited.
 - (3). Bar of actions against executors and administrators in general.
 - (4). Computation of period of limitation in general.
 - (5). Request for delay.
 - (6). Effect of appointment of new administrator.
 - (7). Presentation and allowance or rejection of claim.
 - (8). Rights as against new or uninventoryed assets.
- 438. Parties.
 - (1). In general.
 - (2). Making executor or administrator defendant upon refusal to sue.

162. EXECUTORS AND ADMINISTRATORS

X. ACTIONS.(Cont'd)

- (3). Executor or administrator as both plaintiff and defendant in same action.
- (4). Joinder of coexecutors or coadministrators.
- (5). Legatees, heirs, and distributees as parties in general.
- (6). Recovery and protection of property of estate in general.
- (7). Actions on claims against estate.
- (8). Actions concerning real estate.
- (9). Foreclosure of liens and mortgages.
- (10). Enforcement or rescission of contracts of deceased.
- (11). Action to recover legacy or distributive share.
- 439. Joinder or intervention in actions by others.
- 440. Removal or death pending action.
- 441. Process and appearance.
- 442. Pleading.
- 443. — In general.
 - (1). In general.
 - (2). Matters of defense in general.
 - (3). Allegation or denial of title or authority.
 - (4). Averment of jurisdictional facts.
 - (5). Allegation or denial of indebtedness.
 - (6). Allegation or denial as to assets and claims against estate.
 - (7). Allegation or denial as to conditions precedent.
 - (8). Verification.
- 444. — Allegation and denial of representative capacity.
 - (1). In general.
 - (2). Requisites and sufficiency in general.
 - (3). Capacity in which suit is maintained.
- 445. — Profert and oyer of letters.
- 446. — Plea of plene administravit.
- 447. — Demurrer.
- 448. — Amendment.
- 449. — Issues, proof, and variance.
- 450. Evidence.
- 451. Trial.

X. ACTIONS.(Cont'd)

- (1). In general.
- (2). Questions for jury.
- (3). Instructions.
- (4). Verdict and findings.
- 452. New trial.
- 453. Judgment.
 - (5). In general.
 - (1). Judgment by confession or default.
 - (2). Rendition, form, and requisites.
 - (3). Record and amendment.
 - (4). Conclusiveness, operation, and effect.
- 454. Execution and enforcement of judgment.
- 455. Appeal and error.
- 456. Costs.
 - (1). In general.
 - (2). Persons, property, and fund liable in general.
 - (3). Liability of executor or administrator in general.
 - (4). Unreasonable resistance, and refusal to refer claim or consent to determination on settlement of accounts.
 - (5). Individual liability of executor or administrator.
 - (6). Award or certificate.
 - (7). Enforcement.
- 457. Liabilities for conduct of action or defense.

XI. ACCOUNTING AND SETTLEMENT.

(A) DUTY TO ACCOUNT.

- 458. Nature and grounds.
- 459. Time for accounting.
- 460. Who entitled to require accounting.
- 461. Who liable in general.
- 462. Acting in different capacities.
- 463. Coexecutors or coadministrators.
- 464. Successors and representatives.
- 465. Property to be included.
- 466. Release from liability.
- 467. Failure to account.

(B) PROCEEDINGS FOR ACCOUNTING.

- 468. Nature and form of remedy.
- 469. Jurisdiction of courts.

162. EXECUTORS AND ADMINISTRATORS

XI. ACCOUNTING AND SETTLEMENT.(Cont'd)

- (1). In general.
- (2). After death, removal, or resignation of executor or administrator.
- (3). After final settlement and discharge.
- 470. Limitations and laches.
- 471. Proceedings by executor or administrator.
- 472. Special proceedings to compel accounting.
- 473. Actions for accounting, and administration suits.
 - (1). In general.
 - (2). Parties and process.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Trial, judgment, and review.
 - (6). Costs.

(C) CHARGES AND CREDITS.

- 475. Charges in general.
- 476.5. Increase of assets.
- 477. Rents, profits, and income.
- 478. Interest.
- 479. Credits in general.
- 480. Decrease of assets.
- 481. Payment of claims.
- 482. Expenses of administration.
- 483. Disbursements for benefit of real property.
- 484. Disbursements for benefit of legatees or distributees.
- 485. Counsel fees and costs.
- 486. Debts and payments to self.
- 487. Expenses of account.

(D) COMPENSATION.

- 488. Right to compensation in general.
- 489. Statutory provisions.
- 489.5. Tax on commissions.
- 490. Effect of testamentary provisions.
- 491. Effect of agreements.
- 492. Waiver of right.
- 493. Jurisdiction of courts.
- 494. For what services allowed.
- 495. Commissions.
 - (.5). In general.

XI. ACCOUNTING AND SETTLEMENT.(Cont'd)

- (1). On what charges, credits, or property allowed in general.
- (2). Acting in different capacities.
- (3). On real property and rents thereof.
- (4). On property not assets of estate.
- (5). On proceeds of sale of assets.
- (6). On legacies and distributive shares.
- (7). Investment and continuance of decedent's business.
- 496. Amount and computation of compensation.
 - (1). In general.
 - (2). Commissions.
 - (3). Allowance of gross sum.
- 497. Extra allowances.
- 498. Coexecutors and coadministrators.
- 499. Successive administrations.
- 500. Forfeiture or deprivation of compensation.
- 501. Proceedings and order for allowance.

(E) STATING, SETTLING, OPENING, AND REVIEW.

- 502. Form and requisites of account.
- 503. Vouchers and proof of payment.
- 504. Objections and exceptions.
 - (1). In general.
 - (2). Persons entitled to object.
 - (3). Time for making or filing.
 - (4). Bar, estoppel, and waiver.
 - (5). Form and sufficiency.
 - (6). Questions subject to determination on objections or exceptions.
 - (7). Proceedings and order on objections or exceptions.
- 505. Examination of executor or administrator.
- 506. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 507. Hearing or reference.
 - (.5). In general.
 - (1). Scope of inquiry by court.
 - (2). Hearing by court in general.

162. EXECUTORS AND ADMINISTRATORS

XI. ACCOUNTING AND SETTLEMENT.(Cont'd)

- (3). Submission of issues to jury.
- (4). Reference.
- 508. Order or decree.
 - (1). In general.
 - (2). Construction and operation.
 - (3). Enforcement.
- 509. Opening or vacating.
 - (5). In general.
 - (1). Nature and scope of remedy.
 - (2). Jurisdiction.
 - (3). Persons entitled to maintain proceedings.
 - (4). Grounds.
 - (5). Limitations and laches.

See also LIMITATION OF ACTIONS.

 - (6). Application.
 - (7). Parties and process.
 - (8). Evidence.
 - (9). Hearing and determination.
 - (10). Operation and effect of opening or vacating settlement.
 - (11). Correction of errors in intermediate or partial accounts.
- 510. Review.
 - (5). In general.
 - (1). Nature and form of remedy in general.
 - (2). Decisions reviewable.
 - (3). Right of review.
 - (4). Presentation and reservation in lower court of grounds of review.
 - (5). Parties.
 - (6). Perfection of appeal and effect thereof.
 - (7). Record and proceedings not in record.
 - (8). Scope of review in general.
 - (9). Presumptions.
 - (10). Discretion of lower court.
 - (11). Questions of fact, and findings.
 - (12). Proceedings and determination in appellate court.
 - (13). Operation and effect of decision of appellate court.
- 511. Costs and expenses.
 - (1). In general.
 - (2). Allowance to or against contestants.

XI. ACCOUNTING AND SETTLEMENT.(Cont'd)

- (3). Allowance to or against executor or administrator.
 - (4). Amount.
 - (5). Proceedings for assessment and collection.
 - 512. Operation and effect.
 - 513. — In general.
 - (1). In general.
 - (2). Ex parte settlements.
 - (3). Collateral attack.
 - (4). Settlements operating as final.
 - (5). Successive administrations.
 - (6). Joint or several settlements by co-executors or coadministrators.
 - (7). Effect as to pending actions.
 - (8). Effect as to jurisdiction of court and status of executor or administrator.
 - (9). Persons and matters concluded in general.
 - (10). Rights and liabilities of legatees and distributees.
 - (11). Rights of creditors.
 - (12). Rights and liabilities of executor or administrator in general.
 - (13). Mismanagement or illegal acts.
 - (14). Mistakes and omissions.
 - (15). Assets unadministered or not accounted for.
 - 514. — Partial account.
 - 515. Private accounting and settlement.
 - 516. Actions to open or set aside settlement.
 - (5). In general.
 - (1). Nature and scope of remedy.
 - (2). Grounds of action.
 - (3). Persons entitled to sue.
 - (4). Jurisdiction.
 - (5). Limitations and laches.
 - (6). Parties, pleading, and evidence.
 - (7). Trial and determination.
- ### XII. FOREIGN AND ANCILLARY ADMINISTRATION.
- 517. Foreign appointment.
 - 518. Ancillary appointment.
 - (1). In general.
 - (2). Appointment as dependent on assets or domiciliary appointment.
 - (3). Persons entitled to appointment.

163. EXEMPTIONS

XII. FOREIGN AND ANCILLARY ADMINISTRATION.(Cont'd)

- (4). Proceedings for appointment.
- (5). Operation and effect.
- (6). Discharge and removal.
- 519. Collection and disposition of assets.
 - (1). In general.
 - (2). Sale, assignment, or pledge of assets.
- 520. Sales and conveyances under order of court.
- 521. Presentation and allowance of claims.
- 522. Payment of claims.
- 523. Distribution of estate.
- 524. Actions by foreign executors or administrators.
 - (.5). In general.
 - (1). Rights of action and defenses.
 - (2). Conditions precedent.
 - (3). Proceedings.
- 525. Actions against foreign executors or administrators.
- 526. Accounting and settlement.

XIII. LIABILITIES ON ADMINISTRATION BONDS.

- 527. Nature and extent in general.
 - (1). In general.
 - (2). Joint, successive, or additional bonds.
- 528. Property covered.
 - (1). In general.
 - (2). Property received or converted before execution of bond.
 - (3). Property not assets of estate.
 - (4). Real estate and proceeds thereof.
 - (5). Debts of executor or administrator to estate.
 - (6). Property held in other capacities.
- 529. Functions and acts covered.
- 530. Settlement and discharge of principal.
- 531. Discharge of sureties.
- 532. Breach or fulfillment of condition.
- 533. Necessity of accounting and default by principal.
- 534. Necessity and sufficiency of proceedings for recovery against principal.
- 535. Conclusiveness of adjudication against principal.
- 536. Summary remedies.

XIII. LIABILITIES ON ADMINISTRATION BONDS.(Cont'd)

- 537. Actions.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Conditions precedent.
 - (3). Defenses, and set-off or counter-claim.
 - (4). Jurisdiction and venue.
 - (5). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (6). Persons entitled to enforce liability.
 - (7). Parties and process.
 - (8). Pleading.
 - (9). Evidence.
 - (10). Trial.
 - (11). Amount of recovery.
 - (12). Judgment and review.
 - (13). Costs.

XIV. EXECUTORS DE SON TORT.

- 538. Acts which constitute one executor de son tort.
- 539. Operation and effect of unauthorized acts.
- 540. Liabilities to rightful executor or administrator.
- 541. Liabilities to creditors.
- 543. Effect of subsequent administration by executor de son tort.
- 544. Actions.

163. EXEMPTIONS

SUBJECTS INCLUDED

Exception from liability to seizure and sale, under legal process for payment of debts, of property of debtors, more particularly of personal property

Constitutional and statutory provisions for such exemption

Nature, grounds and extent thereof in general

163. EXEMPTIONS

Who are entitled to benefit of such exemptions, what articles, amount or value are exempt, and against what liabilities exemption is allowed

Waiver or loss of right to exemption
Protection and enforcement of the right

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Decedents' property, exemption from administration and allowances therefrom to widow or family of decedent, see EXECUTORS AND ADMINISTRATORS

Real property, exemption from forced sale as homestead, see HOMESTEAD

Taxation and license fees, exemptions from, see LICENSES, TAXATION

I. NATURE AND EXTENT, ¶1-78.

(A) NATURE, CREATION, DURATION, AND EFFECT IN GENERAL, ¶1-13.

(B) PERSONS ENTITLED, ¶14-30.

(C) PROPERTY AND RIGHTS EXEMPT, ¶31-61.

(D) LIABILITIES ENFORCEABLE AGAINST EXEMPT PROPERTY, ¶62-78.

II. TRANSFER OR INCUMBRANCE OF EXEMPT PROPERTY, ¶79-88.

III. WAIVER, ¶89-99.

IV. ESTOPPEL, ¶100-101.

V. FORFEITURE, ¶102-104.

VI. PROTECTION AND ENFORCEMENT OF RIGHTS, ¶105-153.

I. NATURE AND EXTENT.

(A) NATURE, CREATION, DURATION, AND EFFECT IN GENERAL.

1. Nature of right.
2. What law governs.
3. Constitutional and statutory provisions.
4. Construction of exemption laws in general.
5. Retroactive operation.
 - 5.1. — In general.
6. — Liabilities and liens existing before exemption law.
7. — Liabilities existing before acquisition of right of exemption.
8. Effect of change or repeal of exemption.
9. Intent in acquisition of property.
10. Nature and extent of right created.

I. NATURE AND EXTENT.(Cont'd)

11. Effect of ownership of other property.
12. Exemption of personal property instead of homestead.
13. Duration and termination.

(B) PERSONS ENTITLED.

14. Debtors or defendants.
15. Family relation in general.
16. Head of family and members thereof.
17. Householders.
18. Housekeepers.
19. Married women.
20. Children.
21. Unmarried persons.
22. Particular occupations.
23. Persons in military or naval service.
24. Aged or infirm persons.
25. Citizenship.
26. Residence.
 - 26.1. — In general.
27. — Domicile in general.
28. — Residing with family.
29. — Absence or removal.
30. Surviving husband, wife, children, or next of kin.

(C) PROPERTY AND RIGHTS EXEMPT.

31. General exemptions of personal property.
32. Property within general exemption.
 - 32.1. — In general.
33. — Nature in general.
34. — Money.
35. — Rights of action in general.
36. Amount of exemption and value of property.
37. Specific exemptions in general.
39. Food and provisions.
40. Wearing apparel and material therefor.
41. Arms and military equipments.
42. Household goods.
43. Domestic animals and food therefor.
44. Vehicles and teams.
45. Tools and implements of trade.
46. Materials and stock in trade.
47. Professional books and instruments.
48. Earnings, wages, or salaries.
 - (1). In general.

163. EXEMPTIONS

I. NATURE AND EXTENT.(Cont'd)

- (2). What are wages or personal earnings.
- (3). Wages of mechanics, laborers, and seamen.
- 49. Pension and retirement funds and accounts.
- 50. Life, health, and accident insurance.
 - (1). In general.
 - (2). Mutual benefit insurance.
- 51. Burial lot.
- 52. Property in lieu of specific exemptions.
- 53. Proceeds of exempt property.
- 54. — In general.
- 55. — Voluntary sale, exchange, or mortgage.
- 56. — Involuntary conversion.
- 57. — Proceeds of insurance.
- 58. — Property purchased with exempt money.
- 59. Ownership or possession of property in general.
- 60. Property of tenants in common.
- 61. Partnership property.

(D) LIABILITIES ENFORCEABLE AGAINST EXEMPT PROPERTY.

- 62. Exceptions from exemptions in general.
- 63. Statutory provisions.
- 64. Exception of pre-existing liabilities and liens.
- 65. Purchase price and lien therefor.
- 66. Liens on property when acquired.
- 67. Liens after acquisition of property.
- 68. Necessaries in general.
- 69. Board and lodging.
- 70. Rent.
- 71. Wages and materials.
- 72. Liabilities incurred in fiduciary capacity.
- 73. Liabilities fraudulently incurred.
- 74. Liabilities for torts.
- 75. Liabilities as surety.
- 76. Judgments.
- 77. Debts to government.
- 78. Proceedings for enforcement of claims.

II. TRANSFER OR INCUMBRANCE OF EXEMPT PROPERTY.

- 79. Power to transfer or incumber in general.
- 80. Statutory provisions.

II. TRANSFER OR INCUMBRANCE OF EXEMPT PROPERTY.(Cont'd)

- 81. Sale or exchange.
- 82. Assignment.
- 83. Gift.
- 84. Mortgage.
- 85. Pledge.
- 86. Consent of husband or wife.
- 87. Order of court.
- 88. Rights of purchasers as to exemption.

III. WAIVER.

- 89. Power to waive.
- 90. Statutory provisions.
- 91. Persons authorized to waive.
- 92. Contracts waiving prospective exemption.
- 93. Acts or omissions constituting waiver in general.
- 94. Mortgage or pledge as waiver.
- 95. Consent to levy and sale.
- 96. Revocation of waiver.
- 97. Operation and effect of waiver.
- 98. — In general.
- 99. — As to other creditors.

IV. ESTOPPEL.

- 100. In general.

V. FORFEITURE.

- 102. In general.
- 103. Denial of ownership.
- 104. Fraudulent conveyance or concealment.

VI. PROTECTION AND ENFORCEMENT OF RIGHTS.

- 105. Establishment of right of exemption in general.
- 106. Statutory provisions.
- 107. Process or other proceedings as against which exemption may be allowed.
- 108. — In general.
- 109. — Levy of attachment or execution.
- 110. — Garnishment.
- 111. — Proceedings supplementary to execution.
- 112. — Foreclosure proceedings.
- 113. — Set-off and counterclaim.
- 114. Duties of officer making levy.
- 115. Necessity for claim.

163. EXEMPTIONS

VI. PROTECTION AND ENFORCEMENT OF RIGHTS.(Cont'd)

- 116. — In general.
- 117. — Property specifically exempted.
- 118. Persons who may make claim.
- 119. Time for making claim.
 - (1). In general.
 - (2). At time of levy or before sale.
- 120. Form and requisites of claim.
- 121. — In general.
- 122. — Affidavit.
- 123. — Inventory or schedule.
- 124. Presentation and filing of claim.
- 125. Appraisement.
- 126. Selection.
- 127. Contest and determination of claim.
- 128. Allotment or setting apart.
- 129. Surrender of other property.
- 130. Successive exemptions.
- 131. Denial or infringement of rights.
- 132. — In general.
- 133. — Levy on or sale of exempt property.
- 134. — Evasion of exemption law.
- 135. Motions and other summary remedies.
- 136. Nature and form of action.
- 137. — In general.
- 138. — Replevin.
- 139. — Actions for damages.
- 140. — Injunction in general.
- 141. — Injunction against proceedings in another state.
- 142. Defenses.
- 143. — In general.
- 144. — Set-off of debt or judgment of creditor.
- 145. Jurisdiction.
- 146. Parties.
- 147. Pleading.
- 148. Evidence.
- 149. Damages or penalty.
- 150. Trial.
- 151. Judgment and enforcement thereof.
- 152. Review.
- 153. Costs.

164. EXPLOSIVES

SUBJECTS INCLUDED

Regulation of manufacturer, dealing in, and use of explosive substances generally
Liabilities for injuries therefrom caused by negligence

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Firearms, use of explosives in, see WEAPONS
Gas, explosion of, see GAS
Malicious injury to property, use of explosives, see MALICIOUS MISCHIEF
Nuisance, use of explosives constituting, see NUISANCE
Steam, explosion of, see STEAM
Transportation of articles dangerous to other goods or to passengers, see CARRIERS, SHIPPING

- 1. Power to make regulations.
- 2. Statutory and municipal regulation in general.
- 3. Regulations of manufacture, storage, and sale.
- 4. Violations of regulations.
- 5. Criminal prosecutions.
- 6. Injuries from accidental explosions.
- 7. — In general.
- 8. — Illegal or negligent manufacture, storage, or keeping.
- 9. — Illegal or negligent sale.
- 10. — Illegal or negligent use.
- 11. Injuries from discharge of fireworks.
- 12. Injuries from blasting.

164T. EXTORTION

SUBJECTS INCLUDED

Obtaining or attempting to obtain from another, under color of official or other right, money or other property, more particularly the taking or claiming, by a public officer,

166. EXTRADITION AND DETAINERS

of illegal or excessive fees or compensation for official services

Obtaining or attempting to obtain from another, without color of right, money or other property, or the execution, alteration, or destruction of a valuable security or other instrument in writing, by menaces, either in words oral or written, or in acts, of injury to person, property, or rights, or of accusation of crime or other injury to reputation

Levying blackmail

Extortionate extensions of credit

Nature and elements of these crimes

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bribes, acceptance of, see BRIBERY

Civil liabilities for extortion, see TORTS

Civil liabilities of officers receiving illegal or excessive fees, see PUBLIC EMPLOYMENT

False personation of officer or other person exercising special authority, see FALSE PRETENSES

Robbery by putting in fear, see ROBBERY

Tortious resort to harsh collection methods, see TORTS

1. In general.
2. Statutory provisions.
3. — In general.
4. — Purpose.
5. — Validity.
6. — Retroactive operation.
7. Nature and elements in general.
8. — In general.
9. — Intent; knowledge.
10. — Threat or duress.
11. — Money or property extorted.
12. Official extortion.
13. — In general.
14. — Intent; knowledge.
15. — Color of office or authority.
16. — Threat, duress, or inducement.
17. — Money or property extorted.
18. Federal offenses.

19. — In general.
20. — Intent; knowledge.
21. — Interstate commerce.
22. — Threat or duress.
23. — Money or property extorted.
24. — Official extortion.
 - (1). In general.
 - (2). Intent; knowledge.
 - (3). Interstate commerce.
 - (4). Color of office or authority.
 - (5). Threat, duress, or inducement.
 - (6). Money or property extorted.
25. Loans; credit.
26. Attempts.
27. Defenses.
28. — In general.
29. — Consent or collusion.
30. Parties; aiding and abetting.
31. Indictment or information.
32. — In general.
33. — Requisites and sufficiency.
34. — Issues, proof, and variance.
35. Evidence.
36. — In general.
37. — Admissibility.
38. — Presumptions and burden of proof.
39. — Weight and sufficiency.
 - (1). In general.
 - (2). Federal offenses.
40. Trial.
41. — In general.
42. — Questions of law or fact.
43. — Instructions.
44. Sentence and punishment.

166. EXTRADITION AND DETAINERS

SUBJECTS INCLUDED

Delivery, by one country or state to another, of persons charged with the commission of crime within the jurisdiction of such other country or state, either as matter of comity or under provisions of treaties, constitutions or other compacts

Nature and scope of the remedy in general

166. EXTRADITION AND DETAINERS

Constitutional, treaty and statutory provisions relating thereto

In what cases, and as to what persons, and for what offenses extradition is allowed

Jurisdiction over and proceedings to obtain extradition

Issuance, requisites and validity of demands, requisitions, warrants, etc.

Arrest and delivery of persons accused

Their rights and liabilities after extradition

Review of proceedings, and costs and expenses thereof

Detainers lodged against persons imprisoned in one jurisdiction while charged with crime in another, and proceedings to transfer them for trial

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Habeas corpus for release from extradition or detainer, see HABEAS CORPUS

Requirement of, and proceedings for, extradition of Indians and other native peoples of North America, see INDIANS

I. EXTRADITION, §§1-49.

(A) INTERNATIONAL, §§1-20.

(B) INTERSTATE, §§21-49.

II. DETAINERS, §§50-60.

I. EXTRADITION.

(A) INTERNATIONAL.

1. Nature, grounds, and scope of remedy.
2. Treaties.
3. Statutory provisions.
4. Authority and duty to demand or deliver persons accused.
5. Offenses ground for extradition.
6. Persons subject to extradition.
7. Proceedings for extradition from foreign country.
8. Proceedings for extradition to foreign country.
9. — In general.
10. — Preliminary demand and executive warrant.
11. — Complaint.
12. — Warrant for arrest.
13. — Arrest and bail.
14. — Examination and determination.

I. EXTRADITION.(Cont'd)

(1). In general.

(2). Evidence.

15. — Commitment for extradition and re-arrest after discharge.
16. — Warrant for delivery.
17. — Review of proceedings.
18. Costs and expenses.
19. Rights and liabilities of accused after extradition.
20. Rights of persons illegally brought within jurisdiction.

(B) INTERSTATE.

21. Nature, grounds, and scope of remedy.
22. Constitutional and statutory provisions.
23. Authority and duty to demand or deliver persons accused.
24. — In general.
25. — From or to the territories.
26. — From or to the District of Columbia.
27. Offenses ground for extradition.
28. Persons subject to extradition.
- 28.1. — In general.
29. — Persons charged with crime.
30. — Fugitives from justice.
31. — Persons in custody on charge of other crime.
32. Indictment or affidavit charging offense.
34. Requisition and accompanying documents.
35. Application for arrest and proceedings thereon.
36. Warrant for arrest and delivery.
37. Arrest and bail.
38. Agents to receive delivery.
39. Examination, determination, and review of proceedings.
40. Costs and expenses.
41. Rights and liabilities of accused after extradition.
42. Rights of persons illegally brought within jurisdiction.

II. DETAINERS.

For earlier cases, see COURTS §§477, 495, and 514.

50. In general.
51. Constitutional and statutory provisions; interstate agreement.

II. DETAINERS.(Cont'd)

52. Nature and operation of detainer in general.
53. Jurisdictions, proceedings, persons, and offenses involved.
- 53.1. — In general.
54. — Fugitives and escapees.
55. Request by receiving state, and proceedings thereon.
56. Review of proceedings; contesting detainer or request.
57. Request by prisoner for final disposition and proceedings thereon.
58. Custody, transfer, and return of prisoner.
59. Time for trial.
60. Effect of delay or failure to prosecute; waiver; determination.

167. FACTORS

SUBJECTS INCLUDED

Regulation and conduct of the business of receiving and selling goods consigned or otherwise entrusted to factors, commission merchants, etc. for sale

Rights, powers, duties and liabilities of persons engaged in such business and the principals or consignors, as between themselves and as to others, arising from such consignments, etc.

Incidental transactions, such as advances, pledges, etc., especially as affected by their possession or control of the goods or of evidences of title

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agency in general, and on particular occasions only, not in the course of the agent's ordinary business, see **PRINCIPAL AND AGENT**

Brokers not having possession or control of property, sales of goods through, see **BROKERS**

Security provisions in factoring agreements and the like, as governed by the Uniform

Commercial Code, see **SECURED TRANSACTIONS**

1. Who are factors.
2. Licenses and taxes.
- 2.5. Statutory bonds.
3. Penalties for violations of regulations.
4. Offenses by factors.
5. Appointment or employment.
6. Duration, termination, or revocation of agency.
7. Duties and liabilities of principal in general.
8. Authority conferred in general.
9. Delegation of authority.
10. Duties to principal in general.
- 10.1. — In general.
11. — Nature of factor's obligation.
12. — Skill and care required.
13. — Instructions of principal.
14. — Information to principal.
15. Control and care of goods.
16. Insurance of goods.
17. Obligation to make advances.
18. Title to goods.
19. Power to pledge.
20. Powers, duties, and liabilities as to sale.
- 20.1. — In general.
21. — Authority and duty in general.
22. — Effect of instructions by principal.
23. — Effect of advances by factor.
24. — Place, time, and manner of sale.
25. — Price.
26. — Credit to buyer.
27. — Collection of price.
28. — Assumption by factor of liability for price.
29. Del credere agency.
30. Guaranty by factor of sale, price, or collection.
31. Duties and liabilities as to proceeds.
32. Keeping and rendering accounts.
33. Failure to sell.
34. Individual interest of factor.
35. Factor acting for parties adversely interested.
36. Insolvency of factor.
37. Fraud of factor.
38. Conversion by factor.

167. FACTORS

- 39. Repudiation or ratification of acts of factor.
- 40. Liabilities of factor representing several principals.
- 41. Liabilities of factor to true owner other than principal.
- 42. Actions for proceeds of goods or for accounting.
- 43. Actions for negligence or wrongful acts of factor.
- 44. Commission or other compensation for services.
- 45. Reimbursement of advances, expenses, or losses.
- 46. Actions for compensation.
- 47. Lien.
 - (5). In general.
 - (1). Nature.
 - (2). Existence and extent in general.
 - (3). Possession.
 - (4). Priorities.
 - (5). Waiver, loss, or discharge.
 - (6). Preservation and enforcement.
- 48. Rights, powers, and liabilities as to third persons.
- 48.1. — In general.
- 49. — Representation of principal in general.
- 50. — Loss of or injury to goods.
- 51. — Contracts in general.
- 52. — Pledge of goods.
- 53. — Sale of goods.
- 54. — Warranties.
- 55. — Proceeds of goods.
- 56. — Unauthorized and wrongful acts of factor.
- 57. — Repudiation or ratification of acts of factor.
- 58. Protection, under factors' acts, of persons dealing with factor.
- 59. — In general.
- 60. — Factors or agents within statutes.
- 61. — Possession of goods or of evidence of title.
- 62. — Pledges.
- 63. — Purchasers.
- 64. Right of principal to follow goods or proceeds thereof.
- 65. Rights of creditors of principal and factor.
- 66. Actions by or against principals or factors.

168. FALSE IMPRISONMENT

SUBJECTS INCLUDED

Restraint of the person of another, without sufficient authority, not merely incident to a malicious prosecution

Justification or excuse for such restraint

Liabilities and remedies therefor, civil or criminal

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arrest, right to make, see ARREST

Governmental units' liability for false imprisonment or wrongful conviction, see MUNICIPAL CORPORATIONS, STATES

Habeas corpus for release from improper imprisonment, see HABEAS CORPUS

I. CIVIL LIABILITY, ¶1-42.

(A) ACTS CONSTITUTING FALSE IMPRISONMENT AND LIABILITY THEREFOR, ¶1-15.

(B) ACTIONS, ¶16-42.

II. CRIMINAL RESPONSIBILITY, ¶43-44.

I. CIVIL LIABILITY.

(A) ACTS CONSTITUTING FALSE IMPRISONMENT AND LIABILITY THEREFOR.

- 1. Nature and elements of false imprisonment.
- 2. — In general.
- 2.1. — What law governs.
- 2.5. — Preemption.
- 3. — False imprisonment and malicious prosecution distinguished.
- 4. — Intent and malice.
- 5. — Act or means of arrest or detention.
- 6. — Extent of restraint.
- 7. — Illegality of arrest.
 - (1). In general.
 - (2). Liability of judicial officers.
 - (3). Liability of officer or other person making arrest and persons assisting officer.
 - (4). Liability of person instigating arrest.
 - (5). Effect of subsequent adjudications.

170. FALSE PRETENSES

I. CIVIL LIABILITY.(Cont'd)

- (6). Waiver of defects or objections.
8. — Illegality of detention after arrest.
9. Defenses.
10. — In general.
11. — Exercise of authority or duty.
12. — Judicial process.
13. — Probable cause.
14. — Advice of counsel.
15. Persons liable.
 - (1). In general.
 - (2). Persons procuring or instigating arrest.
 - (3). Liability of principal for acts of agent.

(B) ACTIONS.

16. Nature and form of remedy.
17. Jurisdiction and venue.
18. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
19. Parties.
20. Pleading.
 - (.5). In general.
 - (1). Declaration, complaint, or petition.
 - (2). Plea or answer.
 - (3). Issues, proof, and variance.
21. Evidence.
 - 21.1. — In general.
22. — Presumptions and burden of proof.
23. — Admissibility in general.
24. — Intent and malice.
25. — Character and condition of parties.
26. — Justification.
27. — Nature and circumstances of act.
28. — Extent of injury.
29. — Aggravation of damages.
30. — Mitigation of damages.
31. — Weight and sufficiency.
32. Damages.
 - 32.1. — In general.
33. — Measure in general.
34. — Elements of compensation.
35. — Exemplary.
36. — Amount awarded.
37. Trial.
 38. — In general.
 39. — Questions for jury.

I. CIVIL LIABILITY.(Cont'd)

40. — Instructions.
41. — Verdict and findings.
42. Judgment and review.

II. CRIMINAL RESPONSIBILITY.

43. Offenses.
44. Prosecution and punishment.

170. FALSE PRETENSES

SUBJECTS INCLUDED

Fraudulently obtaining or attempting to obtain from another personal property, or the making or endorsement by another of a negotiable instrument, or the execution of any instrument in writing, or any benefit or advantage, by false tokens or representations

Deception or theft by assuming and acting in the character of another person; or by assuming to be a public officer or person having special authority or privilege, and acting in such assumed capacity; or by appropriating or misusing another person's identification information, particularly in connection with credit cards and similar access devices

Nature and elements of offenses concerning such conduct, including—

- False pretenses
- Larceny or theft by fraud or deception
- Larceny by trick or device
- Cheating
- Swindling
- Passing bad checks
- Writing a check on an account with insufficient funds
- False personation
- False claims of military honors
- Credit card theft or fraud
- Access device theft or fraud
- Identity theft or fraud

Nature and extent of criminal responsibility therefor, and grounds of defense

170. FALSE PRETENSES

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bank fraud, see FINANCE, BANKING, AND CREDIT ¶1715

Civil liability, see CONVERSION AND CIVIL THEFT, FRAUD, REPLEVIN, and other topics

Computer fraud, see FRAUD

Counterfeiting, see COUNTERFEITING

Failing to disclose, concealing, or misrepresenting the encumbered state of property, see FRAUDULENT CONVEYANCES

False claims against government, see STATES and UNITED STATES

False credit applications, see FINANCE, BANKING, AND CREDIT ¶1716

False identification documents, see FORGERY

False representation of citizenship, and false statements in application and use of passport, see ALIENS, IMMIGRATION, AND CITIZENSHIP

False representation of Social Security number, see SOCIAL SECURITY

False statements to government, see FRAUD

False statements to law enforcement officer or investigators, see OBSTRUCTING JUSTICE

Forgery, see FORGERY

Fraud generally, see FRAUD

Fraudulent appropriation of property by one entrusted with possession, see EMBEZZLEMENT

Giving false name to law enforcement officers, see OBSTRUCTING JUSTICE

Mail fraud, see POSTAL SERVICE

Medicare or Medicaid fraud, see HEALTH

Theft or larceny generally, see LARCENY

Wire fraud, see TELECOMMUNICATIONS

I. IN GENERAL, ¶101-150.

II. CHECKS AND OTHER FALSE TOKENS, ¶151-180.

III. FALSE PERSONATION, ¶181-200.

IV. MILITARY PERSONNEL OR HONORS; STOLEN VALOR, ¶201-210.

V. CREDIT CARDS AND OTHER ACCESS DEVICES; IDENTITY THEFT OR FRAUD, ¶211-250.

VI. PROSECUTION, ¶251-330.

(A) IN GENERAL, ¶251-260.

(B) INDICTMENT, INFORMATION, OR COMPLAINT, ¶261-280.

(C) EVIDENCE, ¶281-310.

(D) TRIAL, ¶311-330.

VII. SENTENCE AND PUNISHMENT, ¶331-337.

I. IN GENERAL.

101. In general.

102. Statutory provisions.

103. — In general.

104. — Purpose and construction in general.

105. — Validity.

See also CONSTITUTIONAL LAW.

(1). In general.

(2). Checks and other false tokens.

(3). False personation.

(4). — In general.

(5). — Public employees and officials.

(6). Military personnel or honors; stolen valor.

(7). Credit cards and other access devices; identity theft or fraud.

106. — Retroactive operation.

Ex post facto laws, see also CONSTITUTIONAL LAW XXIII(B). Validity of retroactive statutes, see also STATUTES ¶1580.

107. Federal preemption.

See also STATES I(B).

108. Nature and elements of offenses in general.

109. — In general.

110. — Theft by deception, fraud, or misrepresentation.

111. — Theft by swindle, cheat, trick, or device.

112. Degrees and aggravated offenses in general.

113. Relation to other offenses.

114. Nature of pretense or representation.

115. — In general.

116. — Conduct.

117. — Omissions.

118. — Facts or opinions.

119. — Past or existing facts or future facts; promises.

170. FALSE PRETENSES

I. IN GENERAL.(Cont'd)

- 120. Particular cases and contexts.
- 121. — In general.
- 122. — Procuring written instrument or signature.
- 123. — Contracts and services.
- 124. — Real property; construction fraud.
- 125. — Insurance.
- 126. — Finance and banking.
- 127. — Games and contests.
- 128. — Gifts and charitable contributions.
- 129. — Interstate transportation of persons; travel fraud.
- 130. — Public money, property, services, or benefits.
- 131. Intent.
- 132. Consent; authorization.
- 133. Falsity of pretense or representation.
- 134. — In general.
- 135. — Knowledge of falsity.
- 136. Reliance on pretense or representation.
- 137. Persons who may rely on representations.
- 138. Property or benefit obtained.
- 139. — In general.
- 140. — Value; amount.
- 141. Injury or loss.
- 142. Possession or title.
- 143. Attempts.
- 144. Defenses.
Consent, see ¶132.
- 145. Parties to offenses; persons liable.

II. CHECKS AND OTHER FALSE TOKENS.

Possession of forged check, see FORGERY.

- 151. In general.
- 152. Degrees and aggravated offenses in general.
- 153. Relation to other offenses.
- 154. Intent; knowledge.
- 155. What constitutes check or other false token.
- 156. Issuance of check or other false token.
- 157. — In general.
- 158. — Postdating.
- 159. Insufficient funds.
- 160. Property or benefit obtained.
- 161. — In general.
- 162. — Pre-existing debt.
- 163. — Value; amount.

II. CHECKS AND OTHER FALSE TOKENS.(Cont'd)

- 164. Injury or loss.
- 165. Notice and demand for payment.
- 166. Attempts.
- 167. Defenses.
- 168. — In general.
- 169. — Payee's knowledge of insufficient funds.
- 170. — Tender of payment.
- 171. Parties to offenses; persons liable.

III. FALSE PERSONATION.

- 181. In general.
- 182. Degrees and aggravated offenses in general.
- 183. Relation to other offenses.
- 184. Necessity and nature of impersonation.
- 185. — In general.
- 186. — Actual or fictitious person; deceased persons.
- 187. — Natural or artificial person; corporations and business organizations.
- 188. Public employees and officials.
- 189. — In general.
- 190. — Law enforcement personnel.
- 191. Intent; knowledge.
- 192. Consent; authorization.
- 193. Property or benefit obtained.
- 194. — In general.
- 195. — Value; amount.
- 196. Injury or loss.
- 197. Attempts.
- 198. Defenses.
Consent, see ¶192.
- 199. Parties to offenses; persons liable.

IV. MILITARY PERSONNEL OR HONORS; STOLEN VALOR.

- 201. In general.
- 202. Degrees and aggravated offenses in general.
- 203. Relation to other offenses.
- 204. Intent; knowledge.
- 205. Attempts.
- 206. Defenses.
- 207. Parties to offenses; persons liable.

170. FALSE PRETENSES

V. CREDIT CARDS AND OTHER ACCESS DEVICES; IDENTITY THEFT OR FRAUD.

- 211. In general.
- 212. Degrees and aggravated offenses in general.
- 213. Relation to other offenses.
- 214. Necessity and nature of impersonation.
- 215. — In general.
- 216. — Actual or fictitious person; deceased persons.
- 217. — Natural or artificial person; corporations and business organizations.
- 218. Nature of identifying information.
- 219. Nature of card or other access device.
- 220. — In general.
- 221. — Device-making equipment.
- 222. — Scanning, skimming, or reencoding device.
- 223. Obtaining of information or device.
- 224. Production of information or device.
- 225. Possession of information or device.
- 226. — In general.
- 227. — Constructive possession.
- 228. Use of information or device.
- 229. Transfer of or trafficking in information or device.
- 230. Intent; knowledge.
- 231. Consent; authorization.
- 232. Property or benefit obtained.
- 233. — In general.
- 234. — Value; amount.
- 235. Injury or loss.
- 236. Foreign or interstate commerce.
See also COMMERCE.
- 237. Number of devices or victims.
- 238. Attempts.
- 239. Defenses.
Consent, see §231.
- 240. Parties to offenses; persons liable.

VI. PROSECUTION.

(A) IN GENERAL.

- 251. In general.

(B) INDICTMENT, INFORMATION, OR COMPLAINT.

See also INDICTMENT AND INFORMATION.

- 261. In general.
- 262. Requisites and sufficiency in general.
- 263. — In general.

VI. PROSECUTION.(Cont'd)

- 264. — Nature of pretense or representation.
- 265. — Falsity of pretense or statement.
- 266. — Reliance on pretense or representation.
- 267. — Checks and other false tokens.
- 268. — False personation.
 - (1). In general.
 - (2). Public employees and officials.
- 269. — Military personnel or honors; stolen valor.
- 270. — Credit cards and other access devices; identity theft or fraud.
- 271. Intent; knowledge.
- 272. Property or benefit obtained; injury.
- 273. Attempts.
- 274. Variance between allegations and proof.
- 275. — In general.
- 276. — Checks and other false tokens.
- 277. — False personation.
 - (1). In general.
 - (2). Public employees and officials.
- 278. — Military personnel or honors; stolen valor.
- 279. — Credit cards and other access devices; identity theft or fraud.

(C) EVIDENCE.

See also CRIMINAL LAW XVII.

- 281. In general.
- 282. Presumptions, inferences, and burden of proof.
- 283. — In general.
- 284. — Checks and other false tokens.
- 285. — False personation.
 - (1). In general.
 - (2). Public employees and officials.
- 286. — Military personnel or honors; stolen valor.
- 287. — Credit cards and other access devices; identity theft or fraud.
- 288. Admissibility.
- 289. — In general.
- 290. — Checks and other false tokens.
- 291. — False personation.
 - (1). In general.
 - (2). Public employees and officials.
- 292. — Military personnel or honors; stolen valor.

170A. FEDERAL CIVIL PROCEDURE

VI. PROSECUTION.(Cont'd)

- 293. — Credit cards and other access devices; identity theft or fraud.
- 294. Weight and sufficiency.
- 295. — In general.
- 296. — Nature of pretense or representation.
- 297. — Falsity of pretense or statement.
- 298. — Reliance on pretense or representation.
- 299. — Checks and other false tokens.
- 300. — False personation.
 - (1). In general.
 - (2). Public employees and officials.
- 301. — Military personnel or honors; stolen valor.
- 302. — Credit cards and other access devices; identity theft or fraud.
 - (1). In general.
 - (2). Necessity and nature of impersonation.
 - (3). Nature of identifying information.
 - (4). Nature of card or other access device.
 - (5). Obtaining of information or device.
 - (6). Production of information or device.
 - (7). Possession of information or device.
 - (8). Use of information or device.
 - (9). Transfer of or trafficking in information or device.
- 303. — Intent; knowledge.
- 304. — Consent; authorization.
- 305. — Property or benefit obtained.
- 306. — Injury or loss.
- 307. — Number of devices or victims.
- 308. — Attempts.
- 309. — Parties to offenses.

(D) TRIAL.

See also *CRIMINAL LAW XX*.

- 311. In general.
- 312. Questions of law or fact.
- 313. — In general.
- 314. — Checks and other false tokens.
- 315. — False personation.
 - (1). In general.
 - (2). Public employees and officials.

VI. PROSECUTION.(Cont'd)

- 316. — Military personnel or honors; stolen valor.
- 317. — Credit cards and other access devices; identity theft or fraud.
- 318. Instructions.
- 319. — In general.
- 320. — Checks and other false tokens.
- 321. — False personation.
 - (1). In general.
 - (2). Public employees and officials.
- 322. — Military personnel or honors; stolen valor.
- 323. — Credit cards and other access devices; identity theft or fraud.

VII. SENTENCE AND PUNISHMENT.

See also *SENTENCING AND PUNISHMENT*.

- 331. In general.
- 332. Checks and other false tokens.
- 333. False personation.
- 334. — In general.
- 335. — Public employees and officials.
- 336. Military personnel or honors; stolen valor.
- 337. Credit cards and other access devices; identity theft or fraud.

170A. FEDERAL CIVIL PROCEDURE

SUBJECTS INCLUDED

Generally, the civil procedure, other than appellate, of the District Courts of the United States and the former Circuit Courts of the United States

More particularly, procedure under the Federal Rules of Civil Procedure

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Appearance, see *APPEARANCE*

Appellate procedure, see *FEDERAL COURTS*

Attachment, see *CREDITORS' REMEDIES*

Criminal procedure, see *CRIMINAL LAW*

170A. FEDERAL CIVIL PROCEDURE

District of Columbia, procedure in municipal court, see DISTRICT OF COLUMBIA

Execution, see CREDITORS' REMEDIES

Federal jurisdiction, procedure in, see ADMIRALTY, BANKRUPTCY, FEDERAL COURTS, INTERNAL REVENUE, PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY, and other specific topics

Garnishment, see CREDITORS' REMEDIES

Privileged communications and confidential relations, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

Process, see PROCESS

I. IN GENERAL, ¶1-100.

- (A) IN GENERAL, ¶1-20.
- (B) RULES OF COURT IN GENERAL, ¶21-50.
 - 1. IN GENERAL, ¶21-30.
 - 2. RULES OF CIVIL PROCEDURE, ¶31-50.
- (D) NATURE AND FORM OF REMEDY, ¶71-80.
- (E) JOINDER OF CLAIMS AND REMEDIES, ¶81-100.

II. PARTIES, ¶101-400.

- (A) IN GENERAL, ¶101-110.
- (B) CAPACITY, ¶111-130.
- (C) REAL PARTIES IN INTEREST, ¶131-160.
- (D) CLASS ACTIONS, ¶161-200.
 - 1. IN GENERAL, ¶161-170.
 - 2. PROCEEDINGS, ¶171-180.
 - 3. PARTICULAR CLASSES REPRESENTED, ¶181-200.
- (E) NECESSARY JOINDER, ¶201-240.
 - 1. IN GENERAL, ¶201-210.
 - 2. PARTICULAR, NECESSARY OR INDISPENSABLE PARTIES, ¶211-240.
- (F) PERMISSIVE JOINDER, ¶241-280.
 - 1. IN GENERAL, ¶241-250.
 - 2. PARTICULAR PARTIES WHO MAY BE JOINED, ¶251-280.
- (G) BRINGING IN NEW PARTIES; THIRD-PARTY PROCEEDINGS, ¶281-310.
- (H) INTERVENTION, ¶311-350.
 - 1. IN GENERAL, ¶311-330.
 - 2. PARTICULAR INTERVENORS, ¶331-350.

II. PARTIES—Cont'd

- (I) SUBSTITUTION, ¶351-380.
- (J) DEFECTS, OBJECTIONS AND AMENDMENTS, ¶381-400.

VI. MOTIONS AND ORDERS, ¶611.1-620.

- (A) MOTIONS IN GENERAL, ¶611.1-611.18.
- (B) ORDERS, ¶612.1-612.7.
- (C) RECONSIDERATION, ¶613.1-613.20.
- (D) MOTIONS IN LIMINE, ¶614-620.

VII. PLEADINGS, ¶621-1160.

- (A) PLEADINGS IN GENERAL, ¶621-670.
- (B) COMPLAINT, ¶671-730.
- (C) ANSWER, ¶731-800.
 - 1. IN GENERAL, ¶731-750.
 - 2. AFFIRMATIVE DEFENSE OR AVOIDANCE, ¶751-770.
 - 3. SET-OFFS, COUNTERCLAIMS AND CROSS-CLAIMS, ¶771-800.
- (D) REPLY AND SUBSEQUENT PLEADINGS, ¶801-820.
- (E) AMENDMENTS, ¶821-860.
- (F) SUPPLEMENTAL PLEADINGS, ¶861-880.
- (G) ISSUES, PROOF AND VARIANCE, ¶881-900.
- (H) DEFECTS IN AND OBJECTIONS TO PLEADINGS IN GENERAL, ¶901-920.
- (J) BILL OF PARTICULARS; MORE DEFINITE STATEMENT, ¶941-1030.
 - 1. IN GENERAL, ¶941-970.
 - 2. PARTICULAR CASES, ¶971-1030.
- (L) JUDGMENT ON THE PLEADINGS, ¶1041-1080.
 - 1. IN GENERAL, ¶1041-1060.
 - 2. PARTICULAR CASES, ¶1061-1080.
- (N) STRIKING PLEADING OR MATTER THEREIN, ¶1101-1160.

X. DEPOSITIONS AND DISCOVERY, ¶1261-1690.

- (A) IN GENERAL, ¶1261-1290.
- (B) PERPETUATING TESTIMONY BEFORE ACTION OR PENDING APPEAL, ¶1291-1310.
- (C) DEPOSITIONS OF PARTIES AND OTHERS PENDING ACTION, ¶1311-1470.
 - 1. IN GENERAL, ¶1311-1340.
 - 2. PROCEEDINGS, ¶1341-1380.
 - 3. EXAMINATION IN GENERAL, ¶1381-1400.

170A. FEDERAL CIVIL PROCEDURE

X. DEPOSITIONS AND DISCOVERY

—Cont'd

(C) DEPOSITIONS OF PARTIES AND OTHERS PENDING ACTION

—Cont'd

4. SCOPE OF EXAMINATION, ⚖1401–1430.
5. SUPPRESSION; USE AND EFFECT, ⚖1431–1450.
6. FAILURE TO APPEAR OR TESTIFY; SANCTIONS, ⚖1451–1470.

(D) WRITTEN INTERROGATORIES TO PARTIES, ⚖1471–1550.

1. IN GENERAL, ⚖1471–1500.
2. SCOPE, ⚖1501–1530.
3. ANSWERS; FAILURE TO ANSWER, ⚖1531–1550.

(E) DISCOVERY AND PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE THINGS, ⚖1551–1650.

1. IN GENERAL, ⚖1551–1570.
2. SUBJECT MATTER IN GENERAL, ⚖1571–1580.
3. PARTICULAR SUBJECT MATTERS, ⚖1581–1610.
4. PROCEEDINGS, ⚖1611–1630.
5. COMPLIANCE; FAILURE TO COMPLY, ⚖1631–1650.

(F) PHYSICAL OR MENTAL EXAMINATION OF PERSON, ⚖1651–1670.

(G) ADMISSIONS ON REQUEST, ⚖1671–1690.

XI. DISMISSAL, ⚖1691–1850.

(A) VOLUNTARY DISMISSAL, ⚖1691–1720.

(B) INVOLUNTARY DISMISSAL, ⚖1721–1850.

1. IN GENERAL, ⚖1721–1740.
2. GROUNDS IN GENERAL, ⚖1741–1770.
3. PLEADING, DEFECTS IN, IN GENERAL, ⚖1771–1780.
4. PARTICULAR ACTIONS, INSUFFICIENCY OF PLEADINGS IN, ⚖1781–1820.
5. PROCEEDINGS, ⚖1821–1850.

XII. CONTINUANCE, ⚖1851–1870.

XIII. REFERENCE, ⚖1871–1920.

XIV. PRE-TRIAL CONFERENCE, ⚖1921–1950.

XV. TRIAL, ⚖1951.1–2310.

- (A) IN GENERAL, ⚖1951.1–1990.
- (B) TIME FOR TRIAL; DOCKETS, LISTS AND CALENDARS, ⚖1991–2010.

XV. TRIAL—Cont'd

(C) RECEPTION OF EVIDENCE, ⚖2011–2110.

(F) TAKING CASE OR QUESTION FROM JURY; PREVERDICT MOTION FOR JUDGMENT AS MATTER OF LAW, ⚖2111–2170.

1. IN GENERAL, ⚖2111–2140.

2. QUESTIONS FOR JURY, ⚖2141–2170.

(G) INSTRUCTIONS, ⚖2171–2190.

(H) GENERAL VERDICT, ⚖2191–2210.

(I) INTERROGATORIES ACCOMPANYING FORMS FOR GENERAL VERDICT, ⚖2211–2230.

(J) SPECIAL VERDICT, ⚖2231–2250.

(K) TRIAL BY COURT, ⚖2251–2310.

1. IN GENERAL, ⚖2251–2260.
2. FINDINGS AND CONCLUSIONS, ⚖2261–2310.

XVI. NEW TRIAL, ⚖2311–2390.

(A) IN GENERAL, ⚖2311–2330.

(B) GROUNDS, ⚖2331–2360.

(C) PROCEEDINGS, ⚖2361–2390.

XVII. JUDGMENT, ⚖2391–2690.

(A) IN GENERAL, ⚖2391–2410.

(B) BY DEFAULT, ⚖2411–2460.

1. IN GENERAL, ⚖2411–2440.

2. SETTING ASIDE, ⚖2441–2460.

(C) SUMMARY JUDGMENT, ⚖2461–2570.

1. IN GENERAL, ⚖2461–2480.

2. PARTICULAR CASES, ⚖2481–2530.

3. PROCEEDINGS, ⚖2531–2570.

(D) ON TRIAL OF ISSUES, ⚖2571–2600.

(E) NOTWITHSTANDING VERDICT; JUDGMENT AS MATTER OF LAW, ⚖2601–2620.

(F) ENTRY, RECORD AND DOCKETING, ⚖2621–2640.

(G) RELIEF FROM JUDGMENT, ⚖2641–2670.

(H) LIEN, ⚖2671–2690.

XIX. FEES AND COSTS, ⚖2721–2749.

XX. SANCTIONS, ⚖2750–2848.

(A) IN GENERAL, ⚖2750–2764.

(B) GROUNDS FOR IMPOSITION, ⚖2765–2799.

(C) PERSONS LIABLE FOR OR ENTITLED TO SANCTIONS, ⚖2800–2809.

(D) TYPE AND AMOUNT, ⚖2810–2824.

(E) PROCEEDINGS, ⚖2825–2834.

(F) ON APPEAL, ⚖2835–2848.

170A. FEDERAL CIVIL PROCEDURE

I. IN GENERAL.

(A) IN GENERAL.

1. In general.
2. Power of Congress.
3. Constitutional and statutory provisions.
4. Commencement of actions.
5. Defenses.
- 5.1. — In general.
6. — Equitable defenses.
7. — Hearing before trial.
8. Consolidation of actions.

(B) RULES OF COURT IN GENERAL.

1. IN GENERAL.

21. In general.
22. Admiralty rules.
23. Criminal rules.
24. Equity rules.
25. Local rules of District Courts.

2. RULES OF CIVIL PROCEDURE.

31. In general.
32. Power of Supreme Court.
33. Validity.
34. Purpose.
35. Construction and operation in general.
36. Liberal or strict construction.
37. Rules as having effect of statutes.
38. Construction of Rules together.
39. Substantive rights, effect of Rules on.
40. Jurisdiction and venue, effect of Rules on.
41. Federal statutes superseded.
42. State statutes and Rules superseded.
43. United States, application of Rules to.
44. Retroactive operation of Rules.

(D) NATURE AND FORM OF REMEDY.

71. In general.
72. Legal or equitable nature.
- 72.1. — In general.
73. — Abolition of distinction between law and equity.

(E) JOINDER OF CLAIMS AND REMEDIES.

81. In general.
82. Grounds of claims.
- 82.1. — In general.
83. — Tort and contract claims.

I. IN GENERAL.(Cont'd)

84. Nature of remedies sought.
- 84.1. — In general.
85. — Legal and equitable remedies.
86. Parties involved.
87. Severance of claims.

II. PARTIES.

(A) IN GENERAL.

101. In general.
- 101.5. Identification of parties; fictitious names.
 - (1). In general.
 - (2). Plaintiffs or intervenors.
 - (3). Defendants.
- 101.7. Alignment of parties.
102. Formal and nominal parties.
103. Proper parties in general.
Excludes issues classifiable to particular topics, including constitutional issues, see CONSTITUTIONAL LAW VI(A), and declaratory judgment actions, see DECLARATORY JUDGMENT §§292, 299 et seq.
- 103.1. Standing in general.
- 103.2. — In general; injury or interest.
- 103.3. — Causation; redressability.
- 103.4. — Rights of third parties or public.
- 103.5. — Pleading.

(B) CAPACITY.

111. In general.

(C) REAL PARTIES IN INTEREST.

131. In general.
132. Assignors and assignees.
133. Contractors for benefit of others.
134. Contract beneficiaries.
135. Corporations and business organizations.
136. Creditors.
137. Employers, employees and labor unions.
138. Executors and administrators.
139. Governmental bodies and officers thereof.
140. Guardians and wards.
141. Heirs and testamentary beneficiaries.
142. Insurers and insureds.
143. Lessors and lessees.
144. Mortgagors and mortgagees.
145. Partners and partnerships.
146. Receivers.
147. Representative plaintiffs in general.

170A. FEDERAL CIVIL PROCEDURE

II. PARTIES.(Cont'd)

- 148. Transferors and transferees.
- 149. Trustees and trust beneficiaries.

(D) CLASS ACTIONS.

1. IN GENERAL.

- 161. In general.
See also *¶¶161.1, 161.2, 164.5, 165, 171-180, below.*
- 161.1. Factors, grounds, objections, and considerations in general.
- 161.2. Superiority, manageability, and need in general.
- 162. Discretion of court.
- 163. Impracticability of joining all members of class; numerosity.
- 164. Representation of class; typicality; standing in general.
- 164.5. Effect of mootness.
- 165. Common interest in subject matter, questions and relief; damages issues.
- 166. Hybrid and spurious actions.

2. PROCEEDINGS.

- 171. In general; certification in general.
Excludes grounds for and objections to allowance or certification; see ¶¶161.1 et seq., above; see also ¶¶161, above.
- 172. Evidence; pleadings and supplementary material.
- 173. Hearing and determination; decertification; effect.
- 174. Consideration of merits.
- 175. Time for proceeding and determination.
- 176. Identification of class; subclasses.
- 177. Notice and communications.
- 177.1. — In general.
- 178. — Parties responsible; expense.
- 179. — Sufficiency.
- 180. Options; withdrawal.

3. PARTICULAR CLASSES REPRESENTED.

- 181. In general.
- 181.5. Antitrust plaintiffs.
- 182. Bondholders.
- 182.5. Consumers, purchasers, borrowers, and debtors.
- 183. Creditors.
- 184. Employees.
- 184.5. — In general.

II. PARTIES.(Cont'd)

- 184.10. — Discrimination and civil rights actions in general.
- 184.15. — Sex discrimination actions.
- 184.20. — Age discrimination actions.
- 184.25. — Prior administrative proceeding, use or availability; limitations.
- 184.30. — Public agency actions.
- 185. Heirs and testamentary beneficiaries.
- 185.5. Indians.
- 186. Landowners.
- 186.5. Members of corporations, associations, or unions.
- 186.10. Prisoners and inmates.
- 186.15. Racial, religious, or ethnic groups in general.
- 187. Stockholders, investors, and depositors.
See also CORPORATIONS AND BUSINESS ORGANIZATIONS ¶¶1907-1943, VIII.
- 187.5. Students, parents, and faculty.
- 188. Trust beneficiaries.
- 189. Welfare and social security claimants.

(E) NECESSARY JOINDER.

1. IN GENERAL.

- 201. In general.
- 202. Who are necessary parties.
- 203. Who are indispensable parties.

2. PARTICULAR, NECESSARY OR INDISPENSABLE PARTIES.

- 211. In general.
- 212. Assignors and assignees.
- 213. Automobile owners, drivers and occupants.
- 214. Contracting parties, subcontractors, and sureties and guarantors thereof.
- 215. Corporations and business organizations.
- 216. Creditors.
- 217. Employers, employees and labor unions.
- 218. Executors and administrators.
- 219. Governmental bodies and officers thereof.
- 220. Guardians and wards.
- 221. Heirs and testamentary beneficiaries.
- 221.5. Indians.
- 222. Insurers and insureds.
- 223. Joint obligors and joint obligees in general.
- 224. Landowners and land claimants.

170A. FEDERAL CIVIL PROCEDURE

II. PARTIES.(Cont'd)

- 225. Lessors and lessees.
- 226. Mortgagors and mortgagees.
- 227. Partners and partnerships.
- 228. Pledgors and pledgees.
- 229. Principals and agents.
- 230. Principals and sureties.
- 231. Receivers.
- 232. Transferors and transferees.
- 233. Trustees and trust beneficiaries.

(F) PERMISSIVE JOINDER.

1. IN GENERAL.

- 241. In general.
- 242. Common question of law or fact.

2. PARTICULAR PARTIES WHO MAY BE JOINED.

- 251. In general.
- 252. Automobile owners, drivers and occupants.
- 253. Contractors and subcontractors and sureties thereof.
- 254. Corporations and business organizations.
- 255. Creditors.
- 256. Employers, employees and labor unions.
- 257. Executors, administrators, heirs and testamentary beneficiaries.
- 258. Governmental bodies and officers thereof.
- 259. Insurers and insureds.
- 260. Landowners and land claimants.
- 261. Lessors and lessees.
- 262. Mortgagors and mortgagees.
- 263. Negotiable instruments, parties to.
- 264. Partners and partnerships.
- 265. Principals and agents.
- 265.5. Prisoners and inmates.
- 266. Tort-feasors in general.
- 267. Trustees and trust beneficiaries.

(G) BRINGING IN NEW PARTIES; THIRD-PARTY PROCEEDINGS.

- 281. In general.
- 282. Nature and purpose.
- 283. Discretion of court.
- 284. Option of plaintiff.
- 284.1. — In general.
- 285. — Release of third party by plaintiff.
- 286. Grounds of proceedings in general.

II. PARTIES.(Cont'd)

- 287. Liability of third party in general.
- 288. Contract claim against third party in general.
- 289. Insurer as third party.
- 290. Surety as third party.
- 291. Tort-feasor as third party.
- 292. Time for bringing in third party.
- 293. Proceedings.
- 293.1. — In general.
- 294. — Third-party complaint.
- 295. — Process and notice.
- 296. — Proceedings after third party brought in, in general.
- 297. — Amendment of original complaint.

(H) INTERVENTION.

1. IN GENERAL.

- 311. In general.
- 312. Nature and purpose.
- 313. Discretion of court.
- 314. Grounds and factors.
- 314.1. — In general.
- 315. — Interest of applicant in general.
- 316. — Inadequacy of representation of applicant's interest.
- 317. — Binding effect of principal action on applicant.
- 318. — Subordination to principal action in general.
- 319. — Common question of law or fact.
- 320. Time for intervention.
- 321. Proceedings for intervention.
- 322. Effect of intervention or denial of application therefor.
- 323. Effect of dismissal of original parties.

2. PARTICULAR INTERVENORS.

- 331. In general.
- 332. Assignees and transferees.
- 333. Bondholders.
- 334. Contractors and subcontractors.
- 335. Corporations and business organizations.
- 336. Creditors.
- 337. Employers, employees and labor unions.
- 337.5. Environmental law.
- 338. Governmental bodies and officers thereof.
- 339. Heirs and testamentary beneficiaries.

170A. FEDERAL CIVIL PROCEDURE

II. PARTIES.(Cont'd)

- 339.5. Indians.
- 340. Insurers and insureds.
- 341. Landowners and land claimants.
- 341.3. Lessors and lessees.
- 341.5. Prisoners and inmates.
- 342. Property or lien interest in general.
- 343. Receivers.
- 344. Taxpayers.
- 345. Trustees and trust beneficiaries.

(I) SUBSTITUTION.

- 351. In general.
- 352. Grounds.
- 352.1. — In general.
- 353. — Death in general.
- 354. — Death of plaintiff in general.
- 355. — Death of coplaintiff.
- 356. — Death of defendant in general.
- 357. — Death of codefendant.
- 358. — Incompetency.
- 359. — Transfer of interest in general.
- 360. — Dissolution or reorganization of corporation.
- 361. — Officer's death or separation from office.
- 362. Persons to be substituted.
- 363. Time for substitution.
- 363.1. — In general.
- 364. — Failure to make timely application.
- 365. Proceedings for substitution.
- 366. Effect of substitution or denial of application therefor.

(J) DEFECTS, OBJECTIONS AND AMENDMENTS.

- 381. In general.
- 382. Misnomer and misdescription.
- 383. Capacity.
- 383.5. Real party in interest.
- 384. Nonjoinder.
- 384.1. — In general.
- 385. — Effect of nonjoinder in general.
- 386. — Relief as to parties before court.
- 387. Misjoinder.
- 387.1. — In general.
- 388. — Striking out or dropping parties.
- 389. Third-party proceedings.
- 390. Intervention.

II. PARTIES.(Cont'd)

- 391. Substitution.
- 392. Amendments.

VI. MOTIONS AND ORDERS.

(A) MOTIONS IN GENERAL.

- 611.1. In general.
- 611.2. Discretion of court.
- 611.3. Label or theory of motions.
- 611.4. Time requirements on parties.
- 611.5. Issues that may be raised by motion.
- 611.6. Consolidation of motions; successive and redundant motions.
- 611.7. Requisites and sufficiency of motions in general.
- 611.8. Notice, service, and filing.
- 611.9. Requirement to meet and confer.
- 611.10. Speaking motions.
- 611.11. Amendment or withdrawal of motions.
- 611.12. Striking motions.
- 611.13. Briefs in general.
- 611.14. Response, reply, and surreply; reply and surreply briefs.
- 611.15. Supplemental briefs and filings.
- 611.16. Hearing, evidence, and presentation of arguments.
- 611.17. Waiver, abandonment, or default.
- 611.18. Determination.

(B) ORDERS.

- 612.1. In general.
- 612.2. Entry, record, and docketing.
- 612.3. Findings and conclusions; reasons for decision.
- 612.4. Nunc pro tunc orders.
- 612.5. Sua sponte orders.
- 612.6. Construction and effect.
- 612.7. Compliance and enforcement.

(C) RECONSIDERATION.

- 613.1. In general.
- 613.2. Extraordinary remedy; motion not favored.
- 613.3. Nature and form of remedy; not substitute for appeal.
- 613.4. Power of court.
- 613.5. Discretion of court.
- 613.6. Grounds and factors.

170A. FEDERAL CIVIL PROCEDURE

VI. MOTIONS AND ORDERS.(Cont'd)

- 613.7. — In general.
- 613.8. — Justice; prevention of injustice.
- 613.9. — Error by court.
- 613.10. — Fraud; misconduct.
- 613.11. — Further evidence or argument.
- 613.12. — Change in law or facts.
- 613.13. — Mistake by parties; excusable neglect; surprise.
- 613.14. — Catch-all provisions.
- 613.15. Time for motion.
- 613.16. Motion; notice.
- 613.17. Sua sponte reconsideration.
- 613.18. Hearing; affidavits and evidence in general.
- 613.19. Burden of proof; presumptions.
- 613.20. Determination.

(D) MOTIONS IN LIMINE.

- 614. In general.

VII. PLEADINGS.

(A) PLEADINGS IN GENERAL.

- 621. In general.
- 622. Necessity.
- 623. Nature and purpose.
- 624. Time for pleading.
- 625. Form.
- 625.1. — In general.
- 626. — Caption.
- 627. — Paragraphs; separate counts and defenses.
- 628. — Adoption by reference.
- 629. — Exhibits.
- 630. Sufficiency in general.
- 631. Simplicity, conciseness and directness.
- 633. Certainty, definiteness and particularity.
- 633.1. — In general.
- 634. — Capacity.
- 635. — Conditions precedent.
- 636. — Fraud, mistake and condition of mind.
- 637. — Judgment.
- 638. — Official document or act.
- 639. — Special damage.
- 640. — Time and place.
- 641. Argumentative matter.
- 642. Conclusions in general.
- 650. Evidentiary matter.

VII. PLEADINGS.(Cont'd)

- 652. Irrelevant and immaterial matter.
- 653. Recorded matter.
- 654. Construction.
- 654.1. — In general.
- 655. — Construction doing substantial justice.
- 656. — Liberal or strict construction.
- 657. — Construction against pleader.
- 657.5. — Pro se or lay pleadings.
Excludes habeas corpus petitions, see HABEAS CORPUS ¶668.
 - (1). In general.
 - (2). Civil rights proceedings in general.
 - (3). Prisoners' pleadings.
- 658. Demurrer or exception.
- 658.1. — In general.
- 659. — Abolition.
- 660. Signature.
- 660.1. — In general.
- 661. — Attorney's signature.
Excludes sanctions, see ¶2750 et seq., below.
- 662. Verification.
- 662.1. — In general.
- 663. — Necessity.
- 664. Filing.
- 665. Service.

(B) COMPLAINT.

- 671. In general.
- 672. Nature and purpose.
- 673. Claim for relief in general.
- 674. Theory of claim.
- 675. Alternate, hypothetical and inconsistent claims.
- 675.1. — In general.
- 676. — Multifariousness.
- 677. Anticipating defenses.
- 678. Information and belief.
- 680. Prayer.
- 681. Particular cases.

(C) ANSWER.

1. IN GENERAL.

- 731. In general.
- 732. Nature and purpose.
- 733. Codefendants' joint or separate pleadings.
- 734. Time for pleading.

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VII. PLEADINGS.(Cont'd)

- 734.1. — In general.
- 735. — Extension.
- 736. Requisites and sufficiency in general.
- 737. Alternate, hypothetical and inconsistent defenses.
- 737.1. — In general.
- 738. — Particular defenses.
- 739. Pleading plaintiff's failure to state cause of action.
- 740. Pleas.
- 741. Denials.
- 741.1. — In general.
- 742. — General or special denials.
- 743. — Lack of knowledge or information.
- 744. Admissions.
- 744.1. — In general.
- 745. — Failure to deny.

2. AFFIRMATIVE DEFENSE OR AVOIDANCE.

- 751. In general.
- 752. Contributory negligence, assumption of risk and similar defenses.
- 753. Fraud.
- 753.5. Frauds, statute of.
- 754. Illegality.
- 754.5. Immunity.
- 755. Limitations and laches.
- 756. Release, payment and accord and satisfaction.
- 757. Rescission.
- 758. Res judicata and pendency of another action.
- 759. Waiver and estoppel.

3. SET-OFFS, COUNTERCLAIMS AND CROSS-CLAIMS.

- 771. In general.
- 772. Set-offs.
- 772.1. — In general.
- 773. — Counterclaims.
- 774. — Nature and purpose.
- 775. Compulsory counterclaims.
- 775.1. — In general.
- 776. — Necessity that counterclaim arise out of same transaction or occurrence in general.
- 777. — Particular compulsory counterclaims.
- 778. Permissive counterclaims.

VII. PLEADINGS.(Cont'd)

- 778.1. — In general.
- 779. — Parties involved.
- 780. — Particular permissive counterclaims.
- 781. Legal counterclaims in actions for equitable relief.
- 782. Sufficiency of counterclaims.
- 782.1. — In general.
- 783. — Alternate, hypothetical and inconsistent counterclaims.
- 784. Counterclaim maturing or acquired after pleading.
- 785. Effect of counterclaim.
- 786. Cross-claim against coparty.

(D) REPLY AND SUBSEQUENT PLEADINGS.

- 801. In general.
- 802. Necessity of reply in general.
- 803. Discretion of court; order for reply.
- 804. Particular issues.
- 804.1. — In general.
- 805. — Illegality.
- 806. — Limitations.
- 807. — Mistake.
- 808. — Rescission.
- 809. — Res judicata.
- 810. Admissions and denials.
- 810.1. — In general.
- 811. — Failure to reply.
- 812. Counterclaim in reply.
- 813. Sufficiency of reply.
- 813.1. — In general.
- 814. — Departure.
- 815. Pleadings subsequent to reply.

(E) AMENDMENTS.

- 821. In general.
- 822. Nature and purpose.
- 823. Necessity.
- 824. Time for amendment in general.
- 825. Amendment as of course.
- 826. Amendment on court's own motion.
- 827. Leave of court in general.
- 828. Discretion of court.
- 828.1. — In general.
- 829. — Successive applications.
- 830. — Time for amendment.
- 831. — Conforming to proof.

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VII. PLEADINGS.(Cont'd)

- 832. — New cause of action or defense.
- 833. Liberality in allowing amendment.
- 834. Injustice or prejudice.
- 835. Conforming to proof.
- 835.1. — In general.
- 836. — Time for amendment.
- 837. — Issues tried by consent of parties.
- 838. — New cause of action or defense.
- 839. Complaint.
- 839.1. — In general.
- 840. — Time for amendment.
- 841. — New cause of action in general.
- 842. — Theory or form of action.
- 843. — Nature and extent of relief sought.
- 844. Answer.
- 844.1. — In general.
- 845. — Time for amendment.
- 846. — New defense.
- 847. — Counterclaim.
- 847.5. Cross-claims.
- 848. Reply and subsequent pleadings.
- 849. Motion and proceedings for allowance.
 - (1). In general.
 - (2). Requisites of motion.
 - (3). Amendments by briefs or motion papers.
 - (4). Burden of proof.
 - (5). Hearing, determination, order; matters considered.
 - (6). Reconsideration, reargument, or rehearing.
- 850. Conditions on allowance.
- 851. Form and sufficiency of amendment; futility.
- 852. Effect of amendment.

(F) SUPPLEMENTAL PLEADINGS.

- 861. In general.
- 862. Nature and purpose.
- 863. Discretion of court.
- 864. Complaint.
- 864.1. — In general.
- 865. — Time for filing.
- 866. — New cause of action.
- 867. Answer.
- 867.1. — In general.
- 868. — Time for filing.
- 869. — New defense.

VII. PLEADINGS.(Cont'd)

- 870. Reply and subsequent pleadings.
- 871. Effect.

(G) ISSUES, PROOF AND VARIANCE.

- 881. In general.
- 883. General denial, issues under.
- 884. Matters to be proved.
- 884.1. — In general.
- 885. — Admitted matters.
- 886. — Affirmative defenses.
- 887. Evidence admissible under pleadings.
- 888. Variance.

(H) DEFECTS IN AND OBJECTIONS TO PLEADINGS IN GENERAL.

- 901. In general.
- 902. Time for objection.
- 903. Mode and sufficiency of objection.
- 904. Failure to object.
- 904.1. — In general.
- 905. — Objection on one ground as waiver of other grounds.
- 906. Failure to stand on or renew objection.
- 907. Aider of pleading by verdict or judgment.

(J) BILL OF PARTICULARS; MORE DEFINITE STATEMENT.

1. IN GENERAL.

- 941. In general.
- 942. Discretion of court.
- 943. Nature and purpose in general.
- 944. Distinction between remedies.
- 945. Grounds in general.
- 946. Filing motion as preliminary to other motions.
- 947. Necessity.
- 947.1. — In general.
- 948. — To prepare responsive pleading.
- 949. — To prepare for trial.
- 950. Sufficiency of pleading in other respects.
- 951. Ability to furnish particulars.
- 952. Obtaining evidence or names of witnesses.
- 952.1. — In general.
- 953. — Depositions and discovery, availability of.
- 954. Matters within movant's knowledge.
- 955. Order on court's own motion.

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VII. PLEADINGS.(Cont'd)

- 956. Time for motion.
- 957. Motion and proceedings thereon.
- 958. Determination of motion.
- 959. Sufficiency.
- 960. Amendment.
- 961. Effect.
- 961.1. — In general.
- 962. — Bill or statement as part of pleadings.

2. PARTICULAR CASES.

- 971. In general.
- 972. Accounting, actions for.
- 973. Anti-trust cases.
- 974. Automobile cases.
- 974.1. — In general.
- 975. — Negligence.
- 976. — Injury or damage.
- 977. Banks, actions involving.
- 978. Bonds, actions involving.
- 978.1. — In general.
- 979. — Breach.
- 980. — Damage.
- 980.4. Civil rights cases.
- 980.5. — In general.
- 980.6. — Employees and employment discrimination.
- 981. Contract cases in general.
- 981.1. — In general.
- 982. — Nature, terms and time of contract.
- 983. — Breach.
- 984. — Damage.
- 985. Corporations and business organizations in general, actions involving.
- 986. Declaratory judgment cases.
- 987. Denaturalization cases.
- 988. Employees' actions in general.
- 988.1. — In general.
- 989. — Negligence.
- 990. — Time, place and circumstances of injury.
- 991. — Extent of injury or damage.
- 992. Fair Labor Standards Act cases.
- 992.1. — In general.
- 993. — Nature and terms of employment or employer's business.
- 994. — Violations in general.

VII. PLEADINGS.(Cont'd)

- 995. — Names of employees and violations relating to particular employees.
- 997. Fraudulent transfers, actions to set aside.
- 998. Injunction cases in general.
- 999. Insurance cases.
- 999.1. — In general.
- 1000. — Terms of policies.
- 1001. — Nature and cause of loss.
- 1002. — Extent of loss.
- 1003. — Defenses.
- 1004. Literary property, actions involving.
- 1005. Negligence, actions for in general.
- 1005.1. — In general.
- 1006. — Acts constituting negligence.
- 1007. — Time, place and circumstances of injury.
- 1008. — Defenses.
- 1009. — Extent of injury or damage.
- 1010. Penalties, actions for.
- 1010.1. — In general.
- 1011. — Nature and elements of wrongful act.
- 1012. — Amount recoverable.
- 1013. Railroads and street railroads, actions involving.
- 1014. Sale of personalty, actions involving.
- 1014.1. — In general.
- 1015. — Nature and terms of contract.
- 1016. — Damage.
- 1017. Tax cases.
- 1018. Tort cases in general.
- 1018.1. — In general.
- 1019. — Nature and elements of tortious act.
- 1020. — Injury or damage.

(L) JUDGMENT ON THE PLEADINGS.

1. IN GENERAL.

- 1041. In general.
- 1042. Nature and purpose.
- 1044. Clear right to judgment.
- 1045. Want of fact issue.
- 1045.1. — In general.
- 1046. — Admissions, effect of.
- 1047. — Denials, effect of.
- 1048. — Affirmative defense or avoidance, effect of.
- 1049. Insufficiency of claim or defense.

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VII. PLEADINGS.(Cont'd)

- 1051. Time for motion.
- 1052. Motion and proceedings thereon.
- 1053. Determination of motion.
- 1053.1. — In general.
- 1054. — Matters considered.
- 1055. — Matters deemed admitted.

2. PARTICULAR CASES.

- 1061. In general.
- 1062. Automobile cases.
- 1063. Contract cases in general.
- 1064. Employees' actions.
- 1065. Injunction cases.
- 1066. Insurance cases.
- 1067. Negligence cases in general.
- 1068. Tax cases.

(N) STRIKING PLEADING OR MATTER THEREIN.

- 1101. In general.
- 1102. Nature and purpose of remedy.
- 1103. Discretion of court.
- 1104. Motion not favored.
- 1105. Grounds.
- 1105.1. — In general.
- 1106. — Want of issue for hearing or trial.
- 1107. — Prejudice from allegations.
- 1108. Affirmative defense or avoidance.
- 1108.1. — In general.
- 1109. — Contributory negligence, assumption of risk and similar defenses.
- 1110. — Fraud.
- 1111. — Illegality.
- 1112. — Limitations, laches and prescription.
- 1113. — Release, payment and accord and satisfaction.
- 1114. — Rescission.
- 1115. — Res judicata and multiplicity of actions.
- 1116. — Waiver and estoppel.
- 1117. Amended pleadings.
- 1118. Anticipatory allegations.
- 1119. Capacity and representation, allegations of.
- 1120. Commingled claims or defenses.
- 1121. Conclusions and generalities.
- 1122. Counterclaims.
- 1122.5. Crossclaims.

VII. PLEADINGS.(Cont'd)

- 1123. Denials.
- 1124. Evidentiary matter.
- 1125. Immaterial, irrelevant or unresponsive matter.
- 1125.1. — In general.
- 1126. — Particular allegations.
- 1127. Impertinent or scandalous matter.
- 1128. Inconsistent matter.
- 1129. Insufficient allegations in general.
- 1129.1. — In general.
- 1130. — Propriety of motion to strike.
- 1131. — Particular complaints or allegations therein.
- 1132. — Particular answers or allegations therein.
- 1133. — Particular replies or allegations therein.
- 1134. Law, matters of.
- 1135. Limitations and laches, claims barred by.
- 1136. Moot matters.
- 1137. Prayer or allegation of damages.
- 1138. Redundant, indirect or prolix matter.
- 1139. Sham; frivolous matter.
- 1140. Unnecessary matter; matter in issue under other allegations.
- 1141. Untimely allegations.
- 1142. Order on court's own motion.
- 1143. Time for motion.
- 1144. Motion and proceedings thereon.
- 1145. Determination of motion.
- 1145.1. — In general.
- 1146. — Matters considered.
- 1147. — Matters deemed admitted.
- 1148. — Vacation of order.
- 1149. Effect of determination.
- 1149.1. — In general.
- 1150. — Pleading over.

X. DEPOSITIONS AND DISCOVERY.

(A) IN GENERAL.

- 1261. In general.
- 1262. Nature and purpose.
- 1262.1. — In general.
- 1263. — Preparation for trial.
- 1264. Actions in which remedy is available.
- 1265. Other remedy, availability or prior use of.

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X. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 1266. Persons subject.
- 1267. Discretion of court.
- 1267.1. — In general.
- 1268. — Liberality in allowance of remedy.
- 1269. Grounds and objections.
- 1269.1. — In general.
- 1270. — Inconvenience or other detriment.
- 1271. Proceedings to obtain.
- 1271.5. Protective orders.
- 1272. Scope.
- 1272.1. — In general.
- 1273. — Adverse party's case, matters relating to.
- 1274. — Evidentiary matters.
- 1275. — Identity and location of witnesses and others.
- 1275.5. Jurisdictional discovery.
- 1276. Use of testimony or information.
- 1277. Effect.
- 1278. Failure to respond; sanctions.

(B) PERPETUATING TESTIMONY BEFORE ACTION OR PENDING APPEAL.

- 1291. In general.
- 1292. Nature and purpose of remedy.
- 1293. Grounds and objections.
- 1294. Petition.
- 1295. Notice and service.
- 1296. Order and examination.
- 1297. Use of testimony.
- 1298. Effect.
- 1299. Failure to respond; sanctions.

(C) DEPOSITIONS OF PARTIES AND OTHERS PENDING ACTION.

1. IN GENERAL.

- 1311. In general.
- 1312. Letters rogatory from without the United States.
- 1313. Nature and purpose.
- 1314. — In general.
- 1315. — Taking for use in another proceeding.
- 1316. — Jurisdiction, determination of.
- 1317. — Impeachment, contradiction or corroboration of witness at trial.
- 1318. Actions in which depositions may be taken.

X. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 1319. Other remedy, availability or prior use of.
- 1319.1. — In general.
- 1320. — Bill of particulars.
- 1321. — Written interrogatories.
- 1322. — Documents, discovery and production of.
- 1323. Persons whose depositions may be taken.
- 1323.1. — In general.
- 1324. — Parties.
- 1325. — Officers and employees of corporations.
- 1326. Stipulations.
- 1327. Grounds for taking.
- 1327.1. — In general.
- 1328. — Inability to procure attendance of witness in general.
- 1329. — Age, sickness, infirmity or imprisonment.
- 1330. — Nonresidence or absence of witness in general.
- 1331. — Absence from the United States.
- 1332. Objections to taking and grounds for refusal.
- 1333. Compensation of deponent.
- 1334. Errors and irregularities.

2. PROCEEDINGS.

- 1341. In general.
- 1342. Time for motion for taking.
- 1342.1. — In general.
- 1343. — Condition of cause.
- 1344. Discretion of court.
- 1344.1. — In general.
- 1345. — Leave of court, necessity for.
- 1346. Notice of examination or motion for leave to examine.
- 1346.1. — In general.
- 1347. — Necessity of notice.
- 1348. — Name and address of deponent.
- 1349. — Time and place.
- 1350. — Subject of examination.
- 1351. — Service.
- 1352. Order for taking.
- 1353. Subpoena.
- 1353.1. — In general.
- 1354. — Subpoena duces tecum.

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X. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 1355. Protective orders.
- 1355.1. — In general.
- 1356. — Discretion of court.
- 1357. — Vacating notice.
- 1358. — Order that deposition be not taken.
- 1359. — Time and place of, and procedure for, taking.
- 1360. — Requiring written interrogatories.
- 1361. — Limiting scope of examination in general.
- 1362. — Secret processes, developments or research.
- 1363. — Privileged matters in general.
- 1364. — Irrelevant and immaterial matters.
- 1365. — Annoyance, embarrassment or oppression.
- 1366. — Motions for protective orders and proceedings thereon.
- 1367. Terminating or limiting pending oral examination.
- 1367.1. — In general.
- 1368. — Bad faith, annoyance, embarrassment or oppression.
- 1369. Written interrogatories, proceedings for depositions on.
- 1369.1. — In general.
- 1370. — Orders for protection of parties and deponents.
- 1371. Persons before whom depositions may be taken.
- 1372. Record of testimony; furnishing copies.
- 1373. Submission to deponent; changes; signing.
- 1374. Certification.
- 1375. Filing.

3. EXAMINATION IN GENERAL.

- 1381. In general.
- 1382. Order of taking more than one examination in same action.
- 1383. Time and place of examination.
- 1384. Cross-examination.
- 1385. Redirect examination.

4. SCOPE OF EXAMINATION.

- 1401. In general.
- 1402. Grounds of claim or defense.

X. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 1403. Relevancy and materiality.
- 1404. Probable admissibility at trial of evidence sought.
- 1405. Admitted matters and matters already known or available.
- 1406. Business transactions and practices in general.
- 1407. Circumstances of accident or injury and cause thereof.
- 1408. Documents, examination involving.
- 1409. Events after beginning of action.
- 1410. Extent of injury or damage.
- 1411. Hearsay.
- 1412. Identity and location of witnesses and others.
- 1413. Opinions, conclusions and matters unknown.
- 1417. Work product privilege; trial preparation materials.

5. SUPPRESSION; USE AND EFFECT.

- 1431. Suppression.
- 1432. Use.
- 1432.1. — In general.
- 1433. — Continued existence of grounds for taking in general.
- 1434. — Age, sickness, infirmity or imprisonment.
- 1435. — Death.
- 1436. — Exceptional circumstances.
- 1437. — Different use than that for which taken; different proceeding.
- 1438. — Incompleteness of deposition.
- 1439. — Part of deposition.
- 1440. — Objections to use of depositions.
- 1441. Effect.

6. FAILURE TO APPEAR OR TESTIFY; SANCTIONS.

- 1451. In general.
- 1452. Order compelling answer.
- 1453. Payment of expenses.
- 1454. Facts taken as established or denial precluded.
- 1455. Striking out defaulting party's pleading.
- 1456. Contempt.

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(D) WRITTEN INTERROGATORIES TO PARTIES.

1. IN GENERAL.

- 1471. In general.
- 1472. Nature and purpose.
- 1473. Actions in which interrogatories may be served.
- 1474. Other remedy, availability or prior use of.
- 1474.1. — In general.
- 1475. — Bill of particulars.
- 1476. — Deposition.
- 1477. — Documents, discovery and production of.
- 1478. Parties subject to interrogation.
- 1478.1. — In general.
- 1479. — Adverse parties, who are.
- 1480. — Officer of corporation, partnership or association.
- 1481. Stipulations.
- 1482. Grounds.
- 1483. Objections and grounds for refusal.
- 1484. Discretion of court in general.
- 1485. Leave of court, necessity for.
- 1486. Motion for leave to submit, and proceedings thereon.
- 1487. Service or filing.
- 1488. Number, form and importance.
- 1488.1. — In general.
- 1489. — Specificity and definiteness.
- 1490. Striking out interrogatories.
- 1491. Effect.
- 1492. Protective orders.

2. SCOPE.

- 1501. In general.
- 1502. Grounds of claim or defense.
- 1503. Relevancy and materiality.
- 1504. Probable admissibility at trial of evidence sought.
- 1505. Admitted matters and matters already known or available.
- 1506. Adverse party's case; contention interrogatories.
- 1507. Circumstances of accident or injury or cause thereof.
- 1508. Documents, examination involving.
- 1509. Extent of injury or damage.
- 1510. Events after beginning of action.
- 1511. Evidentiary matters.

X. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 1512. Identity and location of witnesses and others.
- 1513. Opinions, conclusions and matters unknown.
- 1517. Work product privilege; trial preparation materials.

3. ANSWERS; FAILURE TO ANSWER.

- 1531. In general.
- 1532. Duty to answer.
- 1532.1. — In general.
- 1533. — Inability to answer.
- 1534. Sufficiency; supplementation of answers.
- 1535. Striking out.
- 1536. Use.
- 1537. Failure to answer; sanctions.
- 1537.1. — In general.
- 1538. — Order compelling answer.
- 1539. — Payment of expenses.
- 1540. — Facts taken as established or denial precluded.
- 1541. — Striking out defaulting party's pleading.
- 1542. — Contempt.

(E) DISCOVERY AND PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE THINGS.

1. IN GENERAL.

- 1551. In general.
- 1552. Nature and purpose.
- 1553. Actions in which remedy is available.
- 1554. Other remedy, availability or prior use of.
- 1555. Persons subject.
- 1556. Stipulations.
- 1557. Grounds.
- 1558. Objections and grounds for refusal.
- 1558.1. — In general.
- 1559. — Expense and inconvenience.
- 1560. Effect.

2. SUBJECT MATTER IN GENERAL.

- 1571. In general.
- 1572. Relevancy and materiality.
- 1573. Probable admissibility at trial.
- 1574. Existence, possession, custody, control and location.

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3. PARTICULAR SUBJECT MATTERS.

- 1581. In general.
- 1582. Audits, records of.
- 1583. Bills, vouchers and records of repairs.
- 1584. Books of account.
- 1585. Carriage of passengers or goods, records of.
- 1586. Bank records; checks.
- 1587. Contracts.
- 1588. Corporations and business organizations.
- 1589. Deeds and other conveyances.
- 1590. Employees' reports to employers.
- 1591. Employment, records of.
- 1592. Files and contents thereof in general.
- 1593. Government records, papers and property.
- 1594. Investigations, reports and records of in general.
- 1595. Insurance, matters relating to.
- 1596. Literary and musical compositions.
- 1597. Machinery and appliances.
- 1598. Medical and hospital reports and records.
- 1599. Photographs; right to take photographs in general.
- 1601. Releases and similar matters.
- 1602. Statements taken in preparation for litigation.
- 1603. Taxes, matters relating to.
- 1604. Work product privilege; trial preparation materials.
 - (1). In general.
 - (2). Waiver.

4. PROCEEDINGS.

- 1611. In general.
- 1612. Time for motion.
- 1613. Discretion of court.
- 1613.1. — In general.
- 1614. — Leave of court, necessity for.
- 1615. Motion and proceedings thereon.
- 1615.1. — In general.
- 1616. — Good cause in general.
- 1617. — Relevancy and materiality.
- 1618. — Designation of document or thing and contents thereof.
- 1619. — Possession, custody and control.
- 1620. — Conclusions and opinions.
- 1621. — Successive motions.

X. DEPOSITIONS AND DISCOVERY. (Cont'd)

- 1622. Notice.
- 1623. Determination of motion.
- 1624. Order.
- 1625. Protective orders.

5. COMPLIANCE; FAILURE TO COMPLY.

- 1631. In general.
- 1632. Duty to comply.
- 1633. Time for compliance.
- 1634. Sufficiency of compliance.
- 1635. Use of subject matter.
- 1636. Failure to comply; sanctions.
- 1636.1. — In general.
- 1637. — Payment of expenses.
- 1638. — Facts taken as established or denial precluded.
- 1639. — Striking out defaulting party's pleading.
- 1640. — Contempt.

(F) PHYSICAL OR MENTAL EXAMINATION OF PERSON.

- 1651. In general.
- 1652. Actions in which examinations may be had.
- 1653. Persons subject to examination.
- 1654. Grounds and objections.
- 1655. Motion.
- 1656. Notice.
- 1657. Order.
- 1658. Place and time.
- 1659. Report.
- 1660. Use of information obtained.
- 1663. Failure to comply.
- 1663.1. — In general.
- 1664. — Contempt.

(G) ADMISSIONS ON REQUEST.

- 1671. In general.
- 1672. Nature and purpose.
- 1673. Subject matter.
- 1673.1. — In general.
- 1674. — Relevancy and materiality.
- 1676. Request.
- 1676.1. — In general.
- 1677. — Striking request.
- 1678. Duty to respond.
- 1679. Time for response.

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X. DEPOSITIONS AND DISCOVERY.(Cont'd)

- 1679.1. — In general.
- 1680. — Allowance of additional time.
- 1681. Response.
- 1681.1. — In general.
- 1682. — Denial of duty to respond or statement of inability.
- 1683. Use.
- 1684. Effect.
- 1685. Failure to respond; sanctions.
- 1686. Withdrawal or amendment of response.

XI. DISMISSAL.

(A) VOLUNTARY DISMISSAL.

- 1691. In general.
- 1692. Nature and purpose.
- 1693. Discretion of court.
- 1694. Dismissal of part of cause of action.
- 1695. Dismissal as to part of parties in general.
- 1696. Class actions.
- 1700. Grounds and objections.
- 1701. Time for dismissal; condition of cause.
- 1701.1. — In general.
- 1702. — Answer, effect of in general.
- 1703. — Counterclaim, effect of.
- 1704. — Counterclaim, time for dismissal of.
- 1705. — Trial, dismissal during.
- 1706. Stipulations.
- 1707. Motion and proceedings thereon.
- 1708. Notice.
- 1709. Determination.
- 1710. Order.
- 1711. Terms and conditions.
- 1711.1. — In general.
- 1712. — Payment of costs and expenses.
- 1713. Effect.
- 1713.1. — In general.
- 1714. — Successive dismissals.
- 1715. Reconsideration, vacation, or setting aside.

(B) INVOLUNTARY DISMISSAL.

1. IN GENERAL.

- 1721. In general.
- 1722. Nature and purpose in general.

XI. DISMISSAL.(Cont'd)

- 1723. Other remedy, availability or prior use of.
- 1723.1. — In general.
- 1724. — Bill of particulars.
- 1725. — Demurrer.
- 1726. — Discovery.
- 1727. — Striking pleading or matter therein.
- 1728. Discretion of court.
- 1729. Dismissal of part of cause of action.

2. GROUNDS IN GENERAL.

- 1741. In general.
- 1741.3. Violation of a court order or rule in general.
- 1741.5. State secret privilege.
- 1743. Misjoinder of claims or defenses.
- 1744. Parties, defects as to.
- 1744.1. — In general.
- 1745. — Capacity in general.
- 1746. — Capacity in particular actions.
- 1747. — Nonjoinder in general.
- 1748. — Nonjoinder in particular actions.
- 1749. — Misjoinder in general.
- 1750. — Misjoinder in particular actions.
- 1751. Process, defects in.
- 1752. Affirmative defenses, raising by motion to dismiss.
- 1752.1. — In general.
- 1753. — Contributory negligence, assumption of risk and similar defenses.
- 1753.5. — Immunity.
- 1754. — Limitations, laches and prematurity.
- 1755. — Res judicata and pendency of another action.
- 1756. — Statute of frauds.
- 1757. — Waiver and estoppel.
- 1758. Failure to prosecute.
- 1758.1. — In general.
- 1759. — Length of delay in general.
- 1760. — Prejudice from delay.
- 1761. — Process, delay in obtaining service of.
- 1762. — Excuses in general.
- 1763. — Death or disability.
- 1764. — Pendency of other proceedings.
- 1765. Stipulations, breach of.

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3. PLEADING, DEFECTS IN, IN GENERAL.

- 1771. In general.
- 1772. Insufficiency in general.
- 1773. Clear or certain nature of insufficiency.
- 1774. Counterclaim.
- 1775. Prayer.

4. PARTICULAR ACTIONS, INSUFFICIENCY OF PLEADINGS IN.

- 1781. In general.
- 1788.5. Civil rights actions.
- 1788.6. — In general.
- 1788.10. — Prisoners' actions.
- 1789. Conspiracy and fraud, actions involving.
- 1790. Contracts, actions involving in general.
- 1791. Copyright, trademark, patent and unfair competition actions.
- 1792. Creditors' actions.
- 1793. Employees and employment discrimination, actions involving.
- 1793.1. — In general.
- 1794. — Fair Labor Standards Act cases.
- 1795. Governmental bodies or officers, actions involving.
- 1797. Insurance actions.
- 1798. Land, actions involving in general.
- 1799. Leases, actions involving.
- 1800. Libel and slander, actions for.
- 1801. Mortgages, actions involving.
- 1802. Negligence, actions for in general.
- 1803. Negotiable instruments, actions involving.
- 1804. Personalty, actions involving in general.
- 1805. Railroads and street railroads, actions involving.
- 1806. Receivers, actions involving.
- 1807. Rescission of contracts.
- 1808. Specific performance.
- 1809. Stockholders', investors, and other class actions.
- 1810. Tax actions.
- 1811. Tort actions in general.
- 1812. Trusts, actions involving.

5. PROCEEDINGS.

- 1821. In general.
- 1822. Time for motion; condition of cause.
- 1822.1. — In general.
- 1823. — Answer, effect of.
- 1824. Dismissal on court's own motion.

XI. DISMISSAL (Cont'd)

- 1825. Motion and proceedings thereon.
- 1826. Notice.
- 1827. Determination.
- 1827.1. — In general.
- 1828. — Time of determination; reserving decision.
- 1829. — Construction of pleadings.
- 1830. — Doubtful issues.
- 1831. — Fact issues.
- 1832. — Matters considered in general.
- 1833. — Affidavits.
- 1835. — Matters deemed admitted; acceptance as true of allegations in complaint.
- 1836. Order.
- 1837. Effect.
- 1837.1. — In general.
- 1838. — Pleading over.
- 1839. Reconsideration, vacation, or setting aside.
- 1839.1. — In general.
- 1840. — Grounds and objections.
- 1841. — Time for vacation.
- 1842. — Proceedings for vacation.
- 1843. — Reconsideration of denial of motion to dismiss.

XII. CONTINUANCE.

- 1851. In general.
- 1852. Discretion of court.
- 1853. Stipulations.
- 1854. Persons entitled.
- 1855. Grounds and factors.
- 1855.1. — In general.
- 1856. — Absence of witness or evidence in general.
- 1857. — Prejudice from absence of witness or evidence.
- 1858. — Amendments and change of parties.
- 1859. — Want of preparation.
- 1860. Motion and proceedings thereon.
- 1861. Determination and order.

XIII. REFERENCE.

Excludes reference to United States Magistrates, see UNITED STATES MAGISTRATES or to Bankruptcy Court, see BANKRUPTCY.

- 1871. In general.

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XIII. REFERENCE.(Cont'd)

- 1872. Nature and purpose.
- 1873. Discretion and power of court.
- 1874. Stipulations.
- 1875. Grounds, objections and scope.
- 1875.1. — In general.
- 1876. — Complicated nature of issues.
- 1877. Particular proceedings and issues.
- 1877.1. — In general.
- 1878. — Accounting.
- 1880. — Conspiracy.
- 1881. — Damages and relief obtainable.
- 1882. — Foreign law.
- 1883. — Liability in general.
- 1884. — Process, validity and effect of.
- 1885. — Solvency or other financial status.
- 1887. Proceedings to obtain reference.
- 1888. Order for reference.
- 1888.1. — In general.
- 1889. — Vacation; termination of reference.
- 1890. Master or referee.
- 1890.1. — In general.
- 1891. — Appointment and tenure.
- 1892. — Compensation.
- 1893. Proceedings on reference.
- 1893.1. — In general.
- 1894. — Evidence.
- 1895. — Instructions to master or referee in pending reference.
- 1896. Report, findings and conclusions.
- 1896.1. — In general.
- 1897. — Necessity and sufficiency in general.
- 1898. — Evidence, report of.
- 1899. — Objections; failure to object.
- 1900. — Conclusiveness in general.
- 1901. — Clear error in general.
- 1902. — Clear error; particular findings.
- 1903. — Weight and sufficiency of evidence supporting.
- 1904. — Report as evidence.
- 1905. — Adoption or rejection.
- 1906. — Modification.
- 1907. — Further evidence before court.
- 1908. — Recommittal.

XIV. PRE-TRIAL CONFERENCE.

- 1921. In general.

XIV. PRE-TRIAL CONFERENCE.(Cont'd)

- 1922. Nature and purpose.
- 1923. Discretion of court.
- 1924. Grounds and objections.
- 1925. Scope.
- 1925.1. — In general.
- 1926. — Duty to disclose issues to be raised at trial.
- 1927. — Simplification and elimination of issues in general.
- 1928. — Admissibility and procurement of evidence.
- 1931. — Limitation of number of witnesses.
- 1933. — Relief allowable.
- 1934. — Settlement of case.
- 1935. Pretrial order.
- 1935.1. — In general.
- 1936. — Vacation.
- 1937. Record or report.
- 1938. Effect.
- 1938.1. — In general.
- 1939. — Limitation of issues in general.
- 1940. — Particular issues, elimination of.
- 1941. — Admissibility of evidence.
- 1942. — Waiver of issues not raised.
- 1943. — Dismissal of claim or defense.

XV. TRIAL.

(A) IN GENERAL.

- 1951.1. In general.
- 1951.2. Nature and purpose of trial in general.
- 1951.3. Role and obligations of judge.
- 1951.4. — In general.
- 1951.5. — Discretion.
- 1951.6. — Order, decorum, and efficiency of proceedings.
- 1951.7. Fair and impartial trial in general.
- 1951.8. Requisites of fair trial.
- 1951.9. Time limitations.
- 1951.10. Management of courtroom in general.
- 1951.11. Seating in court.
- 1951.12. Access to proceedings; public trial.
- 1951.13. Cameras, recording devices, sketches, and drawings.
- 1951.14. Security.
- 1951.15. Conduct of or affecting witnesses.

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XV. TRIAL.(Cont'd)

- 1951.16. — In general.
- 1951.17. — Appearance and attire.
- 1951.18. — Conduct of witness.
- 1951.19. — Restraint.
- 1951.20. Conduct of or affecting parties.
- 1951.21. — In general.
- 1951.22. — Appearance and attire.
- 1951.23. — Conduct of party.
- 1951.24. — Restraint.
- 1951.25. — Presence of party.
- 1951.26. Presence and conduct of spectators.
- 1951.27. Counsel.
- 1951.28. — In general.
- 1951.29. — Appointment of counsel.
- 1951.30. — Adequacy of representation.
- 1951.31. Experts and others appointed to assist court.
- 1951.32. Experts and others appointed to assist parties.
- 1951.33. Trial briefs.
- 1951.34. Ex parte communications.
- 1951.35. Court reporters and stenographers.
- 1951.36. Adjournment.
- 1951.37. Experiments and tests.
- 1951.38. Publicity, media coverage, and occurrences extraneous to trial.
- 1951.39. Gag orders and similar restraints.
- 1951.40. Mistrial.
- 1951.41. — In general.
- 1951.42. — Particular cases.
- 1953. Separate or consolidated trials of different actions.
- 1954. Separate trials in same action.
- 1954.1. — In general.
- 1955. — Grounds and objections.
- 1956. Separate trial as to particular parties.
- 1957. Separate trial of issues raised by particular pleadings.
- 1957.1. — In general.
- 1958. — Counterclaims or cross-claims.
- 1959. Separate trial of particular issues.
- 1959.1. — In general.
- 1960. — Contracts, existence and validity of.
- 1961. — Damages.
- 1962. — Equitable issues.
- 1963. — Limitations and laches.
- 1964. — Release.

XV. TRIAL.(Cont'd)

- 1965. — Res judicata or pendency of another action.
- 1966. Notice.
- 1967. Right to open and close.
- 1968. View and inspection.
- 1969. Judge's remarks and conduct.
- 1970. Counsel's conduct and arguments.
- 1970.1. — In general.
- 1971. — Opening statements in general.
- 1972. — Sufficiency of opening statements.
- 1973. — Statements as to facts, comments and arguments in general.
- 1973.5. — Insurance or indemnity, evidence of.
- 1974. Jury's custody, conduct and deliberations.
- 1974.1. — In general.
- 1975. — Instructions after submission of case.
- 1976. Objections and exceptions.

(B) TIME FOR TRIAL; DOCKETS, LISTS AND CALENDARS.

- 1991. In general.
- 1992. Discretion of court.
- 1993. Assignment of cases for trial.
- 1993.1. — In general.
- 1994. — Precedence.
- 1995. Transfer of cases.
- 1996. Striking or dropping case.
- 1996.1. — In general.
- 1997. — Reinstatement.
- 1998. Waiver of objections.

(C) RECEPTION OF EVIDENCE.

- 2011. In general.
- 2012. Separation and exclusion of witnesses.
- 2013. Offer of proof.
- 2014. Conditional admission or rejection.
- 2015. Order of proof and rebuttal.
- 2016. Reopening case for further evidence.
- 2017. Objections.
- 2017.1. — In general.
- 2018. — Motions to strike.
- 2019. — Failure to object; waiver.

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**(F) TAKING CASE OR QUESTION FROM JURY;
PREVERDICT MOTION FOR JUDGMENT
AS MATTER OF LAW.**

1. IN GENERAL.

- 2111. In general.
- 2112. Motions by or acquiescence of both parties.
- 2113. Withdrawal of juror.
- 2114. Nature and form of remedy.
- 2114.1. — In general.
- 2115. — Demurrer to evidence.
- 2116. — Dismissal or nonsuit.
- 2117. — Direction of verdict.
- 2118. Grounds and objections.
- 2118.1. — In general.
- 2119. — Variance.
- 2120. — Jury's failure to agree.
- 2121. Motion and proceedings thereon.
- 2121.1. — In general.
- 2122. — Time for motion.
- 2123. — Sufficiency.
- 2124. — Reservation of motion or decision.
- 2125. — Abandonment or waiver of motion.
- 2126. Determination.
- 2126.1. — In general.
- 2127. — Construction of evidence.
- 2128. Order.
- 2129. Effect.

2. QUESTIONS FOR JURY.

- 2141. In general.
- 2142. Weight and sufficiency of evidence.
- 2142.1. — In general.
- 2143. — Evidence which would require verdict to be set aside.
- 2144. — Court's opinion as to weight of evidence, effect of.
- 2145. — Preponderance of evidence.
- 2146. — Scintilla of evidence.
- 2147. — Positive or negative nature of evidence.
- 2148. Credibility of witnesses.
- 2148.1. — In general.
- 2149. — Physical facts contrary to testimony.
- 2150. Uncontroverted facts or evidence.
- 2151. Conflicting evidence.

XV. TRIAL.(Cont'd)

- 2152. Conclusions or inferences from evidence.
- 2153. Particular issues.
- 2153.1. — In general.
- 2154. — Law of state or foreign country; international law.
- 2156. — Validity or construction of pleadings or documents.

(G) INSTRUCTIONS.

- 2171. In general.
- 2172. Invasion of jury's province.
- 2173. Necessity and subject matter.
- 2173.1. Form, requisites, and sufficiency.
 - (1). In general.
 - (2). Evidence and matters of fact.
 - (3). Reading or quoting statutes, ordinances or reported cases.
- 2174. Applicability to pleading and evidence.
- 2175. Time for giving.
- 2176. Requests.
- 2176.1. — In general; necessity.
- 2176.2. — Form and requisites.
- 2176.3. — Instructions already given.
- 2176.4. — Erroneous requests.
- 2177. Objections.
- 2177.1. — In general.
- 2178. — Necessity; waiver.
- 2179. — Sufficiency.
- 2180. Rulings on requests and objections.
- 2181. Construction and operation in general.
- 2182. Construction and effect of charge as a whole.
- 2182.1. — In general.
- 2183. — Particular issues and cases.
- 2184. Error in instructions cured by withdrawal or giving other instructions.
- 2184.1. — In general.
- 2185. — Particular issues and cases.

(H) GENERAL VERDICT.

- 2191. In general.
- 2192. Form and sufficiency.
- 2192.1. — In general.
- 2193. — Conformity to issues; several issues.
- 2194. Amount of recovery.
- 2194.1. — In general.

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XV. TRIAL.(Cont'd)

- 2195. — Apportionment.
- 2196. Amendment or correction.
- 2197. Construction and operation.

(I) INTERROGATORIES ACCOMPANYING FORMS FOR GENERAL VERDICT.

- 2211. In general.
- 2212. Necessity and propriety.
- 2212.1. — In general.
- 2213. — Discretion of court in general.
- 2214. — Particular actions or issues.
- 2215. Form and sufficiency.
- 2216. Answers.
- 2216.1. — In general.
- 2217. — Inconsistency; conflict with general verdict.
- 2218. — Amendment or correction; additional answers.
- 2219. — Construction and operation.
- 2220. Failure to answer.

(J) SPECIAL VERDICT.

- 2231. In general.
- 2232. Necessity and propriety.
- 2232.1. — In general.
- 2233. — Particular actions or issues.
- 2234. Requests.
- 2234.1. — In general.
- 2235. — Time for requests.
- 2236. Form and sufficiency of questions submitted.
- 2237. Form and sufficiency of verdict.
- 2237.1. — In general.
- 2238. — Conformity to issues.
- 2239. Failure to find.
- 2240. Amendment or correction.
- 2241. Additional findings.
- 2242. Construction and operation.

(K) TRIAL BY COURT.

1. IN GENERAL.

- 2251. In general.
- 2252. Advisory jury.

2. FINDINGS AND CONCLUSIONS.

- 2261. In general.
- 2262. Nature and purpose.
- 2262.1. — In general.

XV. TRIAL.(Cont'd)

- 2263. — General or special nature.
- 2264. Necessity and propriety.
- 2264.1. — In general.
- 2265. — Dismissal or nonsuit.
- 2266. — Admission or stipulation as to facts.
- 2267. — Waiver.
- 2268. — Pleadings or evidence requiring.
- 2269. Actions in which findings and conclusions are required.
- 2271. Time for making.
- 2272. Requests or proposed findings.
- 2272.1. — In general.
- 2273. — Time for submission.
- 2274. — Notice.
- 2275. — Form and sufficiency.
- 2276. — Objections; counter-findings.
- 2277. — Failure to submit.
- 2278. Ruling of court on requests or proposed findings.
- 2279. Form.
- 2279.1. — In general.
- 2280. — Preparation by counsel.
- 2281. — Distinction between findings and conclusions.
- 2282. Sufficiency.
- 2282.1. — In general.
- 2283. — Completeness.
- 2284. — Conformity to pleadings, issues and proofs.
- 2285. — Definiteness and certainty.
- 2287. — Master's findings, adoption of.
- 2288. — Opinion, adoption of.
- 2289. — Stipulations, adoption of.
- 2290. — Ultimate or evidentiary facts.
- 2291. Failure to find.
- 2292. Inconsistency.
- 2293. Signing and filing.
- 2294. Amendment or correction.
- 2295. Additional findings or conclusions.
- 2296. Construction and operation.
- 2297. Judgment on partial findings.

XVI. NEW TRIAL.

(A) IN GENERAL.

- 2311. In general.
- 2313. Discretion of court.
- 2314. Partial new trial or rehearing.

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XVI. NEW TRIAL.(Cont'd)

2314.1. — In general.

2315. — Damages.

(B) GROUNDS.

2331. In general.

2332. Misconduct of parties, counsel or witnesses.

2333. Trial errors.

2333.1. — In general.

2334. — Evidence.

2335. — Argument.

2336. — Instructions.

2337. Misconduct of jury or affecting jury; disqualification.

2338. Verdict or findings contrary to law or evidence.

2338.1. — In general.

2339. — Weight of evidence.

2340. — Conflicting evidence.

2341. — Contract actions.

2342. — Tort actions.

2343. Amount of recovery in general.

2344. Inadequate damages.

2345. Excessive damages.

2345.1. — In general.

2346. — Contract actions.

2347. — Tort actions.

2348. Opinion or findings of court, error in.

2349. Surprise, accident, inadvertence or mistake.

2350. Newly discovered evidence.

2350.1. — In general.

2351. — Diligence.

2352. — Credibility; corroboration and impeachment.

2353. — Sufficiency and probable effect of evidence.

(C) PROCEEDINGS.

2361. In general.

2362. Nature of proceedings.

2363. Parties.

2364. Initiative of court.

2366. Time for motion.

2366.1. — In general.

2367. — Newly discovered evidence.

2368. Motion and affidavits.

2368.1. — In general.

XVI. NEW TRIAL.(Cont'd)

2369. — Joinder with other motions.

2370. — Service.

2371. Impeaching verdict.

2372. Hearing and determination.

2372.1. — In general.

2373. — Presumptions; construction of evidence.

2374. — Questions considered.

2375. — Ineffectuality of new trial.

2376. — Effect.

2377. Remittitur.

XVII. JUDGMENT.

(A) IN GENERAL.

2391. In general.

2392. Requisites and validity.

2393. Jurisdiction to sustain judgment.

2394. Process or notice to sustain judgment.

2395. Pleadings and evidence to sustain judgment.

2396. By confession.

2396.5. Offer of judgment.

2397. On consent.

2397.1. — In general.

2397.2. — Form and requisites; validity.

2397.3. — Approval hearing; entry.

2397.4. — Amending, opening, or vacating.

2397.5. — Construction and operation.

2397.6. — Compliance; enforcement.

2398. Payment and satisfaction.

2399. Revival.

(B) BY DEFAULT.

1. IN GENERAL.

2411. In general.

2412. Actions in which default judgment is authorized.

2413. Persons entitled to default judgment.

2414. Persons who may be defaulted.

2415. Grounds.

2416. Defenses and objections.

2417. Entry of default.

2418. Proceedings for judgment.

2418.1. — In general.

2419. — Time for taking proceedings.

2420. — Application for judgment.

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XVII. JUDGMENT.(Cont'd)

- 2421. — Assessment of damages.
- 2422. Relief awarded.
- 2423. Final judgment.

2. SETTING ASIDE.

- 2441. In general.
- 2442. Power of court.
- 2443. Discretion of court.
- 2444. Grounds and factors.
- 2444.1. — In general.
- 2445. — Mistake.
- 2446. — Inadvertence.
- 2447. — Surprise.
- 2448. — Excusable neglect.
- 2449. Persons entitled to relief.
- 2450. Meritorious cause of action or defense.
- 2451. Proceedings.
- 2451.1. — In general.
- 2451.5. — Time for motion.
- 2452. — Application.
- 2453. — Affidavits and other evidence.
- 2454. — Conditions of relief.
- 2455. — Order.

(C) SUMMARY JUDGMENT.

1. IN GENERAL.

- 2461. In general.
- 2462. Purpose.
- 2463. Scope of remedy.
- 2464. Proceedings in which judgment is authorized.
- 2465. Matters affecting right to judgment.
- 2465.1. — In general.
- 2466. — Lack of cause of action or defense.
- 2467. — Want of proper parties.
- 2468. — Bar of statute of limitations.
- 2469. — Effect of prior decision.
- 2470. — Absence of genuine issue of fact in general.
- 2470.1. — Materiality and genuineness of fact issue.
- 2470.2. — Admitted or undisputed facts; conflicting inferences or conclusions.
- 2470.3. — Issues of law.
- 2470.4. — Right to judgment as matter of law.

XVII. JUDGMENT.(Cont'd)

- 2471. — Pleading.
- 2472. Operation and effect.

2. PARTICULAR CASES.

- 2481. In general.
- 2482. Accounting.
- 2483. Agriculture cases.
- 2483.5. Aliens, actions involving.
- 2484. Antitrust and price discrimination cases.
- 2484.5. Armed services, actions involving.
- 2485. Automobile cases.
- 2487. Banks, cases involving.
- 2488. Bills and notes, cases involving.
- 2489. Bonds and evidences of indebtedness, cases involving.
- 2490. Brokers, cases involving.
- 2491. Carriers and warehousemen, actions involving.
- 2491.5. Civil rights cases in general.
- 2491.6. Commodities trading, cases involving.
- 2491.7. Conspiracies, cases involving.
- 2491.8. Consumer credit, cases involving.
- 2491.9. Consumer protection and unfair trade practices, cases involving.
- 2492. Contract cases in general.
- 2493. Copyright, trademark, and unfair competition cases.
Patent cases, see PATENTS.
- 2494. Customs cases.
- 2494.5. Debt collection practices, cases involving.
- 2495. Decedents' estates, cases involving.
- 2496. Divorce cases.
- 2497. Employees and employment discrimination, actions involving.
- 2497.1. — In general.
- 2498. — Fair Labor Standards Act cases; wages and hours regulations.
- 2498.3. Environmental law, cases involving.
- 2498.4. False claims and qui tam actions.
- 2498.5. Food and drug regulations, actions involving.
- 2498.6. Forfeitures, cases involving.
- 2498.7. Franchises and dealers, cases involving.
- 2498.8. Fraudulent conveyances, cases involving.

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XVII. JUDGMENT.(Cont'd)

- 2498.9. Implied indemnification and contribution in general.
- 2499. Indian cases.
- 2500. Infants and other incompetents, cases involving.
- 2500.5. Injunction and declaratory judgment cases in general.
- 2501. Insurance cases.
- 2502. Interpleader.
- 2503. Judgments, actions on.
- 2504. Land and land use, cases involving in general.
- 2505. Landlord and tenant cases.
- 2506. Mines and minerals, cases involving.
- 2507. Mortgage cases.
- 2507.5. National emergency regulations, actions involving.
- 2507.8. Partnerships, cases involving.
- 2509. Public utility cases.
- 2509.5. Racketeering cases.
- 2509.8. Records, disclosure, and privacy, cases involving.
- 2510. Sales cases in general.
- 2510.5. Secured transactions, cases involving.
- 2511. Securities cases in general.
- 2512. Shipping and seamen, cases involving.
- 2512.5. Social security and public welfare, actions involving.
- 2513. Corporations and business organizations.
- 2514. Tax cases.
- 2515. Tort cases in general.
- 2516. Trust cases.
- 2518. Voting rights and elections, cases involving.
- 2519. Wiretapping and electronic surveillance, cases involving.

3. PROCEEDINGS.

- 2531. In general.
- 2532. Time for motion.
- 2533. Motion.
- 2533.1. — In general.
- 2534. — By both parties.
- 2535. Presentation of case in general.
- 2536. Affidavits.
- 2536.1. — In general.
- 2537. — Matters which may be shown.

XVII. JUDGMENT.(Cont'd)

- 2538. — Form and requisites.
- 2539. — Sufficiency of showing.
- 2540. Stipulations.
- 2541. Depositions and interrogatories.
- 2542. Evidence.
- 2542.1. — In general.
- 2543. — Presumptions.
- 2544. — Burden of proof.
- 2545. — Admissibility.
- 2546. — Weight and sufficiency.
- 2547. Hearing and determination.
- 2547.1. — In general.
- 2548. — Necessity for clear case.
- 2549. — Questions to be decided in general.
- 2550. — Questions of law.
- 2551. — Questions of law and fact.
- 2552. — Ascertaining existence of fact issue.
- 2553. — Time for consideration of motion.
- 2554. — Matters considered.
- 2555. — Consideration with other motions.
- 2556. — Findings and conclusions.
- 2557. Partial summary judgment.
- 2558. Judgment or order.
- 2559. Subsequent proceedings; reconsideration of denial of motion.

(D) ON TRIAL OF ISSUES.

- 2571. In general.
- 2572. Form and requisites of judgment.
- 2573. Determination of all issues.
- 2574. Dismissal of action.
- 2575. Separate judgment on particular claim.
- 2576. Judgment against one or more coparties.
- 2577. Judgment for or against person not a party.
- 2578. Interlocutory judgment.
- 2579. Final judgment.
- 2580. Contents of judgment.
- 2580.1. — In general.
- 2581. — Findings of fact and conclusions of law.
- 2582. Nature and extent of relief in general.
- 2583. Conformity to pleadings and proof.
- 2583.1. — In general.

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XVII. JUDGMENT.(Cont'd)

- 2584. — Relief justified by facts.
- 2585. — Prayer for relief.
- 2586. Conformity to verdict or findings.
- 2587. Operation and effect of judgment.

(E) NOTWITHSTANDING VERDICT; JUDGMENT AS MATTER OF LAW.

- 2601. In general.
- 2602. Necessity for preverdict motion for judgment as matter of law; different grounds or issues.
- 2603. Grounds in general.
- 2604. Failure to make case.
- 2605. Motion for judgment.
- 2605.1. — In general.
- 2606. — Time for motion.
- 2607. — Concurrent motion for new trial.
- 2608. Evidence.
- 2608.1. — In general.
- 2609. — Construction of evidence.
- 2610. Determination of issues.

(F) ENTRY, RECORD AND DOCKETING.

- 2621. In general.
- 2622. Direction; authority and duty to enter.
- 2623. Time for entry.
- 2623.1. — In general.
- 2624. — Stay.
- 2625. — Nunc pro tunc entry.
- 2626. Mode and sufficiency; separate document rule.
- 2627. Signature.
- 2628. Notice.

(G) RELIEF FROM JUDGMENT.

- 2641. In general.
- 2641.5. Extraordinary remedy; motion not favored.
- 2642. Judgments from which relief may be granted.
- 2643. Power of court.
- 2643.1. — In general.
- 2644. — After term.
- 2645. — Relief on court's own motion.
- 2646. Discretion of court.
- 2647. Nature and form of remedy.
- 2647.1. — In general.
- 2648. — Bill of review; equitable relief.

XVII. JUDGMENT.(Cont'd)

- 2649. — Writs of error coram nobis and coram vobis.
- 2650. Persons entitled.
- 2651. Grounds and factors.
- 2651.1. — In general.
- 2651.2. — Meritorious claims or defenses in general.
- 2651.3. — Void judgments; jurisdictional defects.
- 2651.5. — Justice; prevention of injustice.
- 2652. — Additional relief.
- 2653. — Error by court, clerk, or jury.
- 2654. — Fraud; misconduct.
- 2655. — Further evidence or argument.
- 2655.3. — Change in law or facts in general.
- 2655.5. — Judgments satisfied, released, or discharged; prospective application no longer equitable.
- 2656. — Mistake by parties; excusable neglect; surprise.
- 2656.5. — Catch-all provisions.
- 2657. Procedure.
- 2657.1. — In general.
- 2658. — Time for instituting proceedings.
- 2659. — Motion, complaint or bill.
- 2660. — Notice.
- 2661. — Objections.
- 2662. — Hearing and determination.
- 2663. — Burden of proof; presumptions.

(H) LIEN.

- 2671. In general.
- 2672. Perfection.
- 2673. Commencement and duration.
- 2674. Property affected.
- 2675. Priorities.
- 2676. Suspension.
- 2677. Foreclosure.

XIX. FEES AND COSTS.

Excludes sanctions, see ¶2750 et seq., below.

- 2721. In general.
- 2723. Discretion of court.
- 2724. Equity.
- 2725. Offer of judgment; compromise or attempted compromise.
- 2726. Result of litigation.
- 2726.1. — In general.

170A. FEDERAL CIVIL PROCEDURE

XIX. FEES AND COSTS.(Cont'd)

- 2727. — Prevailing party.
- 2728. — Dismissal and nonsuit.
- 2729. — Amount of recovery.
- 2730. — Summary judgment.
- 2731. Persons liable.
- 2732. Deposit or security.
- 2732.1. — In general.
- 2733. — Nonresidents.
- 2734. — Forma pauperis proceedings.
- 2735. Amount, rate and items in general.
- 2736. Particular items.
- 2737. Attorney fees.
- 2737.1. — Result; prevailing parties; “American rule”.
- 2737.2. — Public interest or common benefit; private attorneys general.
- 2737.3. — Bad faith, vexatiousness, etc.
- 2737.4. — Amount and elements.
- 2737.5. — Particular types of cases.
- 2737.6. — Governmental entity or officer, actions involving.
- 2737.7. — Patent and copyright cases.
- 2737.13. — Class actions; settlements.
- 2737.14. — Miscellaneous matters.
- 2738. Depositions.
- 2739. Reference.
- 2740. Stenographic costs.
- 2741. Witness fees.
- 2742. Taxation.
- 2742.1. — In general.
- 2742.5. — Attorney fees.
- 2743. Appellate costs.
Excludes sanctions, see ¶2750 et seq., below.
- 2743.1. — In general.
- 2744. — Disposition of case.
- 2745. — Record, abstract or transcript in general.
- 2746. — Unnecessary costs.
- 2748. Payment and collection.

XX. SANCTIONS.

Excludes sanctions in bankruptcy proceedings, see BANKRUPTCY ¶2187, sanctions for failure to comply with request for depositions or discovery, see ¶1278, 1299, 1451-1456, 1537-1542, 1636-1640, 1663, 1664, and 1685 above, and sanctions for failure to attend or provide information at pretrial conference, see ¶1921 above.

(A) IN GENERAL.

- 2750. In general.
- 2751. Constitutional, statutory or regulatory provisions.
- 2751.1. — In general.
- 2752. — Validity.
- 2753. — Purpose.
- 2754. — Retroactive effect.
- 2755. — Construction in general.
- 2756. Authority to impose.
- 2756.1. — In general.
- 2757. — Inherent authority.
- 2758. Mandatory duty or discretion.
- 2759. Papers or conduct which may be subject of sanctions.
- 2759.1. — In general.
- 2760. — Necessity of paper, signature or filing.

(B) GROUNDS FOR IMPOSITION.

- 2765. In general.
- 2766. Multiplication of proceedings in general.
- 2767. Unwarranted, groundless or frivolous papers or claims.
- 2768. — In general.
- 2769. — Reasonableness or bad faith in general; objective or subjective standard.
- 2770. — Failure to prevail in general.
- 2771. — Complaints, counterclaims and petitions.
 - (1). In general.
 - (2). Particular types of cases in general.
 - (3). Government or public officials in general, cases involving.
 - (4). Anti-trust or trade regulation cases.
 - (5). Civil rights cases.
 - (6). Defamation cases.
 - (7). Insurance cases.
 - (8). Intellectual property cases.
 - (9). Labor and employment cases.
 - (10). Products liability cases.
 - (11). Racketeering cases.
 - (12). Securities law cases.
 - (13). Tax cases.
 - (14). Prayers for damages or other relief.

170A. FEDERAL CIVIL PROCEDURE

XX. SANCTIONS.(Cont'd)

- (15). Parties; improper joinder or nonjoinder.
- (16). Affirmative defenses; effect of.
- (17). Attorney fee applications or petitions.
- (18). Removal.
- 2772. — Improper assertion of jurisdiction or venue; process.
- 2773. — Defensive pleadings; answers and replies.
- 2774. — Motions and opposition thereto.
 - (1). In general.
 - (2). Discovery motions.
Excludes sanctions for noncompliance with discovery requests, see 1278, 1299, 1451-1465, 1537-1542, 1636-1640, 1663, 1664 and 1685 above.
 - (3). Dismissal, vacation and default judgment motions.
 - (4). Disqualification and recusal motions.
 - (5). Summary judgment motions and affidavits.
 - (6). Venue motions.
 - (7). Reconsideration, reargument, rehearing or new trial motions.
 - (8). Sanctions motions.
- 2775. — Arbitration proceedings.
- 2776. — Briefs and memoranda.
- 2777. — Settlements and releases; offer, rejection or avoidance.
- 2778. — Proceedings prior to removal.
- 2779. — Partially valid or colorable papers or claims.
- 2780. — Voluntary dismissal or withdrawal, effect of.
- 2781. — Refusal to dismiss or withdraw.
- 2782. — Failure to seek or obtain dismissal or summary judgment.
- 2783. — Duty of reasonable inquiry.
 - (1). In general.
 - (2). As to facts.
 - (2.1). — In general.
 - (3). — Reliance on statements of client.
 - (4). — Deception by client.
 - (5). As to law.
- 2784. — Time as of which paper or claim is judged.

XX. SANCTIONS.(Cont'd)

- 2785. — Duty to review, re-examine, re-evaluate and supplement; continuing duty.
- 2786. — Extension or modification of existing law.
- 2787. — Failure to cite, or improper citation or discussion of, authority.
- 2788. — Pro se filings.
- 2789. — Repeated or successive filings.
- 2790. — Interposition for improper purpose.
- 2791. Misrepresentation or omission of facts.
- 2792. Dilatory or untimely conduct.
- 2793. Violation of court orders.
- 2794. Failure to appear or attend proceedings.
Excludes failure to appear at pretrial conference, see 1921 above.
- 2795. Other particular conduct.

(C) PERSONS LIABLE FOR OR ENTITLED TO SANCTIONS.

- 2800. In general.
- 2801. Relative culpability of client and attorney.
- 2802. Firms or members thereof.
- 2803. Local or associated counsel.
- 2804. Governmental or quasi-governmental entities.
- 2805. Joint and several liability.
- 2806. Persons entitled.

(D) TYPE AND AMOUNT.

- 2810. In general.
- 2811. Monetary sanctions.
- 2812. — In general.
- 2813. — Awards against parties.
- 2814. — Computation; items and services compensable.
- 2815. — Consequential damages.
- 2816. — Multiplication of proceedings.
- 2817. — Ability to pay.
- 2818. — Excessive or unreasonable services or charges.
- 2819. — Mitigation.
- 2820. Non-monetary sanctions.

(E) PROCEEDINGS.

- 2825. In general.

170B. FEDERAL COURTS

XX. SANCTIONS.(Cont'd)

- 2826. Motions; time for filing.
- 2827. Sua sponte imposition.
- 2828. Notice and hearing.
- 2829. Evidence.
- 2830. Determination; order.
- 2831. Enforcement.

(F) ON APPEAL.

- 2835. In general.
- 2836. Discretion.
- 2837. Grounds.
- 2837.1. — In general.
- 2838. — Misrepresentation of facts or record.
- 2839. — Frivolousness in general.
- 2840. — Frivolousness; particular cases.
- 2842. — Bad faith.
- 2843. — Arguments and briefs.
- 2844. — Multiplication of proceedings.
- 2845. — Dilatory conduct; delay.
- 2846. Persons liable; attorneys and pro se litigants.
- 2847. Type and amount of sanction.
- 2848. Proceedings.

170B. FEDERAL COURTS

SUBJECTS INCLUDED

- The judicial department of the federal government
- Nature and scope of the judicial power of the United States in general
- Establishment, organization, and conduct of business of federal courts
- Their jurisdiction and procedure
- Concurrent and conflicting jurisdiction and comity between different federal courts

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Civil procedure in district courts, more especially under Federal Rules of Civil Procedure, see **FEDERAL CIVIL PROCEDURE** and specific topics

Concurrent and conflicting jurisdiction and comity as between state and federal courts, see **COURTS**

Declaratory judgment cases, federal jurisdiction generally and in diversity cases, and concurrent and conflicting jurisdiction, see **DECLARATORY JUDGMENT**

Magistrates in the federal judicial system, see **UNITED STATES MAGISTRATE JUDGES**

Particular specialized courts—

Bankruptcy courts, establishment, organization, jurisdiction, and procedure of, see **BANKRUPTCY I, II**

Court of Federal Claims, establishment, organization, jurisdiction, and procedure of, see **UNITED STATES** ¶113.1

Court of International Trade, jurisdiction and procedure of, see **CUSTOMS DUTIES** ¶84

District of Columbia courts, establishment, organization, jurisdiction, and procedure of, see **DISTRICT OF COLUMBIA** ¶37 and specific procedural topics

Foreign Intelligence Surveillance Court, jurisdiction and procedure of, see **WAR AND NATIONAL EMERGENCY** ¶1133

Military courts, jurisdiction and procedure of, see **ARMED SERVICES** ¶154, **MILITARY JUSTICE**, and **WAR AND NATIONAL EMERGENCY**

Tax Court, jurisdiction and procedure of, see **INTERNAL REVENUE XXI(E)**

Territorial courts, establishment, organization, jurisdiction, and procedure of, see **TERRITORIES** ¶34

Particular subjects, jurisdiction and procedure relating to—

Admiralty, see **ADMIRALTY**

Bankruptcy, see **BANKRUPTCY**

Criminal prosecutions, see **CRIMINAL LAW**

Judicial review of administrative proceedings, see **ADMINISTRATIVE LAW AND PROCEDURE** and specific topics

Transfer of cases brought in state courts to courts of the United States, see **REMOVAL OF CASES**

I. IN GENERAL, ¶2001–2010.

170B. FEDERAL COURTS

II. JURISDICTION, POWERS, AND AUTHORITY IN GENERAL,
 ⌘2011-2100.

(A) IN GENERAL, ⌘2011-2050.

(B) JURISDICTION DEPENDENT ON NATURE OF PARTIES IN GENERAL, ⌘2051-2070.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION IN GENERAL, ⌘2071-2100.

III. CASE OR CONTROVERSY REQUIREMENT, ⌘2101-2210.

(A) IN GENERAL, ⌘2101-2130.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⌘2131-2190.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⌘2191-2210.

IV. CASES "ARISING UNDER" FEDERAL LAW; FEDERAL-QUESTION JURISDICTION, ⌘2211-2370.

(A) IN GENERAL, ⌘2211-2230.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⌘2231-2320.

(C) CASES ARISING UNDER THE CONSTITUTION, ⌘2321-2330.

(D) CASES ARISING UNDER TREATIES, ⌘2331-2340.

(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⌘2341-2370.

V. SUITS AGAINST STATES; ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY, ⌘2371-2400.

VI. CONTROVERSIES BETWEEN CITIZENS OF DIFFERENT STATES; DIVERSITY JURISDICTION,
 ⌘2401-2500.

(A) IN GENERAL, ⌘2401-2410.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⌘2411-2460.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⌘2461-2500.

VII. JURISDICTIONAL AMOUNT; AMOUNT IN CONTROVERSY,
 ⌘2501-2540.

VIII. JURISDICTION OF ENTIRE CONTROVERSY; PENDENT AND SUPPLEMENTAL JURISDICTION, ⌘2541-2570.

IX. RIGHT TO DECLINE JURISDICTION; ABSTENTION, ⌘2571-2700.

(A) IN GENERAL, ⌘2571-2590.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⌘2591-2660.

IX. RIGHT TO DECLINE JURISDICTION; ABSTENTION—Cont'd

(C) FEDERAL-FOREIGN RELATIONS AND QUESTIONS OF FOREIGN LAW; INTERNATIONAL ABSTENTION AND COMITY, ⌘2661-2670.

(D) ABSTENTION AS BETWEEN FEDERAL COURTS, ⌘2671-2680.

(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⌘2681-2700.

X. PERSONAL JURISDICTION,
 ⌘2701-2800.

(A) IN GENERAL, ⌘2701-2720.

(B) ACTIONS BY OR AGAINST NON-RESIDENTS; "LONG-ARM" JURISDICTION, ⌘2721-2780.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⌘2781-2800.

XI. LOCATION OF FORUM; VENUE IN GENERAL, ⌘2801-2900.

(A) IN GENERAL, ⌘2801-2810.

(B) GROUNDS; FACTORS CONSIDERED, ⌘2811-2850.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION, ⌘2851-2900.

XII. CHANGE OR TRANSFER OF VENUE, ⌘2901-2950.

(A) IN GENERAL; VENUE LAID IN PROPER FORUM, ⌘2901-2920.

(B) VENUE LAID IN WRONG FORUM, ⌘2921-2930.

(C) ELIGIBLE TRANSFEREE FORUMS; WHERE ACTION MIGHT HAVE BEEN BROUGHT, ⌘2931-2940.

(D) PROCEEDINGS AND EFFECT OF CHANGE, ⌘2941-2950.

XIII. MULTI-DISTRICT LITIGATION; TRANSFER FOR PRE-TRIAL PROCEEDINGS, ⌘2951-2970.

XIV. FORUM NON CONVENIENS,
 ⌘2971-3000.

XV. STATE OR FEDERAL LAWS AS RULES OF DECISION; ERIE DOCTRINE, ⌘3001-3120.

(A) IN GENERAL, ⌘3001-3020.

(B) APPLICATION TO PARTICULAR MATTERS, ⌘3021-3100.

(C) UNSETTLED OR UNDECIDED QUESTIONS, ⌘3101-3120.

XVI. SUPREME COURT, ⌘3121-3230.

(A) IN GENERAL, ⌘3121-3140.

(B) DECISIONS REVIEWABLE, ⌘3141-3170.

170B. FEDERAL COURTS

XVI. SUPREME COURT—Cont'd

- (C) FINALITY OF DETERMINATION BELOW, ⚭3171–3180.
- (D) PRESENTATION OF QUESTIONS BELOW OR ON REVIEW; RECORD; WAIVER, ⚭3181–3190.
- (E) PROCEEDINGS, ⚭3191–3230.

XVII. COURTS OF APPEALS, ⚭3231–3820.

- (A) IN GENERAL, ⚭3231–3250.
- (B) APPELLATE JURISDICTION AND PROCEDURE IN GENERAL, ⚭3251–3270.
- (C) DECISIONS REVIEWABLE, ⚭3271–3390.
 - 1. IN GENERAL, ⚭3271–3290.
 - 2. PARTICULAR DECISIONS, MATTERS, OR QUESTIONS AS REVIEWABLE, ⚭3291–3350.
 - 3. EFFECT OF UNRESOLVED OR PENDING ISSUES, ⚭3351–3370.
 - 4. CERTIFICATION AND LEAVE TO APPEAL, ⚭3371–3390.
- (D) PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW, ⚭3391–3430.
 - 1. IN GENERAL, ⚭3391–3400.
 - 2. PARTICULAR GROUNDS OF REVIEW, ⚭3401–3430.
- (E) PROCEEDINGS FOR TRANSFER OF CASE, ⚭3431–3460.
- (F) SUPERSEDEAS OR STAY OF PROCEEDINGS, ⚭3461–3470.
- (G) RECORD, ⚭3471–3500.
- (H) BRIEFS, ⚭3501–3510.
- (I) DISMISSAL, WITHDRAWAL, OR ABANDONMENT, ⚭3511–3530.
- (J) HEARING, ⚭3531–3540.
- (K) SCOPE AND EXTENT OF REVIEW, ⚭3541–3760.
 - 1. IN GENERAL, ⚭3541–3560.
 - 2. STANDARD OF REVIEW, ⚭3561–3660.
 - 3. PRESUMPTIONS, ⚭3661–3680.
 - 4. HARMLESS AND REVERSIBLE ERROR, ⚭3681–3730.
 - 5. WAIVER OF ERROR IN APPELLATE COURT, ⚭3731–3750.
 - 6. SUBSEQUENT APPEALS, ⚭3751–3760.
- (L) DETERMINATION AND DISPOSITION OF CAUSE, ⚭3761–3820.

XVIII. THREE-JUDGE COURTS, ⚭3821–3850.

XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS, ⚭3851–3973.

- (A) IN GENERAL, ⚭3851–3860.
- (B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS, ⚭3861–3930.
- (C) PENDENCY AND SCOPE OF PRIOR PROCEEDINGS; FIRST-FILED RULE, ⚭3931–3970.
- (D) TRANSFER AND CERTIFICATION OF CASES, ⚭3971–3973.

I. IN GENERAL.

- 2001. In general.
- 2002. Establishment and organization.
- 2003. — In general.
- 2004. — District courts.
 - (1). In general.
 - (2). Divisions and panels.
 - (3). Terms and sessions.
 - (4). District of Columbia.
- 2005. — Other particular courts.
Supreme Court, see ⚭3121. Courts of Appeals, see ⚭3231. District of Columbia local courts, see DISTRICT OF COLUMBIA ⚭38. Territorial courts, see TERRITORIES ⚭35, 37. Bankruptcy courts, see BANKRUPTCY II(A). Court of Federal Claims, see UNITED STATES ⚭113.2.

II. JURISDICTION, POWERS, AND AUTHORITY IN GENERAL.

(A) IN GENERAL.

- 2011. In general.
- 2012. Judicial power of United States; power of Congress.
- 2013. — In general.
- 2014. — Statutory provisions in general.
- 2015. — Limited jurisdiction; jurisdiction as dependent on constitution or statutes.
- 2016. — Power of Congress to establish courts and define their jurisdiction.
- 2017. — Power of Congress to reduce or withdraw jurisdiction; statutory restrictions in general.
- 2018. — Persons or bodies who may exercise judicial power.
- 2019. — Power of states; effect of state or local law.
- 2020. Inherent powers.
- 2021. Supervisory powers.
- 2022. Power to grant relief.

170B. FEDERAL COURTS

II. JURISDICTION, POWERS, AND AUTHORITY IN GENERAL.(Cont'd)

- 2023. — In general.
- 2024. — Writs in general.
- 2025. — Mandamus.
- 2026. Absence or loss of jurisdiction, and effect thereof.
- 2027. Equity jurisdiction in general.
- 2028. Subject-matter jurisdiction in general.
- 2029. Substantiality doctrine in general.
- 2030. Grounds or exclusions of jurisdiction in general.
- 2031. — In general.
- 2032. — State or federal matters in general.
- 2033. — Property; in rem and quasi in rem jurisdiction.
- 2034. — Domestic relations; families and children.
- 2035. — Probate matters; wills, trusts, and estates.
- 2036. — State taxes.
- 2037. — State rate orders.

(B) JURISDICTION DEPENDENT ON NATURE OF PARTIES IN GENERAL.

- 2051. In general.
- 2052. Particular parties.
- 2053. — In general.
Suits against states, see V. Diversity jurisdiction, see VI.
- 2054. — Controversies to which United States is a party.
- 2055. — Controversies between states.
- 2056. — Controversies between a state and citizens of another state.
- 2057. — Controversies between a state or citizens thereof and foreign states, citizens, or subjects.
- 2058. — Controversies between foreign parties.
- 2059. — Cases affecting ambassadors, other public ministers, or consuls.

(C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION IN GENERAL.

- 2071. In general.
- 2072. Necessity of objection; power and duty of court.
- 2073. — In general.
- 2074. — Sua sponte determination.

II. JURISDICTION, POWERS, AND AUTHORITY IN GENERAL.(Cont'd)

- 2075. — Jurisdiction to determine jurisdiction.
- 2076. Timeliness issues.
- 2077. Waiver, estoppel, and consent.
- 2078. Pleadings and motions.
- 2079. Evidence; affidavits.
- 2080. — In general.
- 2081. — Presumptions and burden of proof.
- 2082. — Weight and sufficiency.
- 2083. Hearing.
- 2084. Questions of law or fact.
- 2085. Findings and conclusions.
- 2086. Dismissal or other disposition.

III. CASE OR CONTROVERSY REQUIREMENT.

(A) IN GENERAL.

- 2101. In general.
- 2102. Justiciability in general.
- 2103. Nature of dispute; concreteness.
- 2104. Rights and interests at stake; adversity.
- 2105. Injury, harm, causation, and redress.
- 2106. Inception and duration of dispute; recurrence; “capable of repetition yet evading review”.
- 2107. Voluntary cessation of challenged conduct.
- 2108. Mootness.
- 2109. — In general.
- 2110. — Rights and interests at stake.
- 2111. — Available and effective relief.
- 2112. — Collateral consequences.
- 2113. — Inception and duration of dispute; recurrence; “capable of repetition yet evading review”.
- 2114. — Voluntary cessation of challenged conduct.
- 2115. — Change in law.
- 2116. — Prudential mootness.
- 2117. — Partial or complete mootness.
- 2118. Ripeness; prematurity.
- 2119. — In general.
- 2120. — Fitness and hardship.
- 2121. — Nature of dispute; concreteness.
- 2122. — Prudential concerns.
- 2123. — Threat of enforcement.

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**(B) PARTICULAR CASES, CONTEXTS,
AND QUESTIONS.**

- 2131. In general.
- 2132. Matters of procedure in general.
- 2133. — In general.
- 2134. — Class actions.
- 2135. — Injunctions.
- 2136. Administrative agencies and proceedings in general.
- 2137. Civil rights and discrimination in general.
- 2138. Torts in general.
- 2139. Property in general.
- 2140. — In general.
- 2141. — Wills, estates, and trusts.
- 2142. — Zoning and land use.
- 2143. — Takings and eminent domain.
- 2144. Water.
- 2145. Governments and political subdivisions.
- 2146. Government property, facilities, and funds.
- 2147. Social Security, public assistance, and other government payments.
- 2148. Taxation.
- 2149. Labor and employment.
- 2150. — In general.
- 2151. — Public employment in general.
- 2152. — Pension and benefit plans.
- 2153. — Labor relations.
- 2154. — Wages, hours, and working conditions.
- 2155. — Railway labor and employment.
- 2156. — Employment discrimination.
- 2157. Education.
- 2158. Elections, voting, and political rights.
- 2159. War, national emergency, and national security.
- 2160. Contracts.
- 2161. Trade, business, and finance.
- 2162. — In general.
- 2163. — Mortgages, liens, and security interests.
- 2164. Intellectual property.
- 2165. Environment and health.
- 2166. Mental health.
- 2167. — In general.
- 2168. — Sex offenders.
- 2169. Motor vehicles.
- 2170. Carriers and public utilities.
- 2171. — In general.

**III. CASE OR CONTROVERSY
REQUIREMENT.(Cont'd)**

- 2172. — Telecommunications.
- 2173. Families and children.
- 2174. Aliens, immigration, and citizenship.
- 2175. Corporations and other organizations.
- 2176. Criminal justice.
- 2177. — In general.
- 2178. — Arrest and pretrial detention.
- 2179. — Imprisonment and incidents thereof.
- 2180. Search, seizure, and confiscation.
- 2181. Bankruptcy.
- 2182. Indians and Indian lands.
- 2183. Racketeering.

**(C) OBJECTIONS, PROCEEDINGS,
AND DETERMINATION.**

- 2191. In general.
- 2192. Necessity of objection; power and duty of court.
- 2193. — In general.
- 2194. — Sua sponte determination.
- 2195. — Jurisdiction to determine jurisdiction.
- 2196. Timeliness issues.
- 2197. Waiver, estoppel, and consent.
- 2198. Pleadings and motions.
- 2199. Evidence; affidavits.
- 2200. — In general.
- 2201. — Presumptions and burden of proof.
- 2202. — Weight and sufficiency.
- 2203. Hearing.
- 2204. Questions of law or fact.
- 2205. Findings and conclusions.
- 2206. Dismissal or other disposition.

**IV. CASES "ARISING UNDER" FEDERAL
LAW; FEDERAL-QUESTION
JURISDICTION.**

(A) IN GENERAL.

- 2211. In general.
- 2212. Power to confer, expand, restrict, or withdraw federal-question jurisdiction.
- 2213. Substantiality of federal question.
- 2214. Causes of action created by federal law.
- 2215. State matters, and relation of federal matters thereto.

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**IV. CASES "ARISING UNDER" FEDERAL
LAW; FEDERAL-QUESTION
JURISDICTION.(Cont'd)**

- 2216. — In general.
- 2217. — State-law claims and causes of action.
- 2218. — Preemption.
 - (1). In general.
 - (2). Complete preemption.
- 2219. Common law.

**(B) PARTICULAR CASES, CONTEXTS,
AND QUESTIONS.**

- 2231. In general.
- 2232. Matters of procedure in general.
- 2233. — In general.
- 2234. — Declaratory relief in general.
- 2235. — Alternative dispute resolution in general.
- 2236. Administrative agencies and proceedings in general.
- 2237. Civil rights and discrimination in general.
- 2238. Torts in general.
- 2239. Property in general.
- 2240. — In general.
- 2241. — Land patents.
- 2242. — Wills, estates, and trusts.
- 2243. — Zoning and land use.
- 2244. — Takings and eminent domain.
- 2245. Water.
- 2246. Governments and political subdivisions.
- 2247. — In general.
- 2248. — Interstate compacts.
- 2249. — Public records or information.
- 2250. Government property, facilities, and funds.
- 2251. — In general.
- 2252. — Public lands and mineral rights.
- 2253. — Federal enclaves.
- 2254. — Postal matters.
- 2255. Social Security, public assistance, and other government payments.
- 2256. — In general.
- 2257. — Medical assistance.
- 2258. — Public housing.
- 2259. Taxation.
- 2260. Labor and employment.
- 2261. — In general.
- 2262. — Public employment in general.

**IV. CASES "ARISING UNDER" FEDERAL
LAW; FEDERAL-QUESTION
JURISDICTION.(Cont'd)**

- 2263. — Pension and benefit plans.
- 2264. — Labor relations.
 - (1). In general.
 - (2). Labor contracts.
 - (3). Labor organizations or officers, actions against.
 - (4). Arbitration of labor disputes.
- 2265. — Wages, hours, and working conditions.
- 2266. — Railway labor and employment.
- 2267. — Employment discrimination.
- 2268. Education.
- 2269. Elections, voting, and political rights.
- 2270. War, national emergency, and national security.
- 2271. Contracts.
- 2272. Trade or business.
- 2273. — In general.
- 2274. — Commerce.
- 2275. — Antitrust.
- 2276. — Banks and banking.
- 2277. — Insurers and insurance.
- 2278. — Securities regulation.
- 2279. — Mortgages, liens, and security interests.
- 2280. — Bonds executed under federal law.
- 2281. Intellectual property.
- 2282. — In general.
- 2283. — Copyrights.
- 2284. — Patents.
 - (1). In general.
 - (2). Title, conveyances, and contracts.
 - (3). Infringement.
 - (4). Declaratory relief.
 - (5). Other particular claims.
- 2285. — Trademarks and trade names.
- 2286. Environment and health.
- 2287. Mental health.
- 2288. — In general.
- 2289. — Sex offenders.
- 2290. Motor vehicles.
- 2291. Carriers and public utilities.
- 2292. — In general.
- 2293. — Telecommunications.
- 2294. Families and children.
- 2295. Aliens, immigration, and citizenship.

170B. FEDERAL COURTS

IV. CASES "ARISING UNDER" FEDERAL LAW; FEDERAL-QUESTION JURISDICTION.(Cont'd)

- 2296. — In general.
- 2297. — Tort claims.
- 2298. Foreign states or sovereigns.
- 2299. Corporations and other organizations.
- 2300. Criminal justice.
- 2301. — In general.
- 2302. — Arrest and pretrial detention.
- 2303. — Imprisonment and incidents thereof.
- 2304. Search, seizure, and confiscation.
- 2305. Bankruptcy.
- 2306. Indians and Indian lands.
- 2307. Racketeering.

(C) CASES ARISING UNDER THE CONSTITUTION.

- 2321. In general.
- 2322. Particular cases, contexts, and questions.
- 2323. — In general.
- 2324. — Particular constitutional rights and provisions.
 - (1). In general.
 - (2). First Amendment.
 - (3). Due process.
 - (4). Equal protection.
 - (5). Commerce Clause.
 - (6). Impairment of contract.
- 2325. — Elections, voting, and political rights.
- 2326. — Criminal justice.
 - (1). In general.
 - (2). Searches and seizures.
 - (3). Arrest and pretrial detention.
 - (4). Prosecutions.
 - (5). Sentencing.
 - (6). Imprisonment and incidents thereof.
 - (7). Habeas corpus.

(D) CASES ARISING UNDER TREATIES.

- 2331. In general.
- 2332. Particular cases, contexts, and questions.
- 2333. — In general.
- 2334. — Carriers.
- 2335. — Indians and Indian lands.

(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION.

- 2341. In general.
- 2342. Necessity of objection; power and duty of court.
- 2343. — In general.
- 2344. — Sua sponte determination.
- 2345. — Jurisdiction to determine jurisdiction.
- 2346. Timeliness issues.
- 2347. Waiver, estoppel, and consent.
- 2348. Pleadings and motions.
- 2349. — In general.
- 2350. — "Well-pleaded complaint" rule.
- 2351. — Particular cases.
 - (1). In general.
 - (2). Civil rights; equal protection.
 - (3). Pension and benefit plans.
 - (4). Labor relations; fair labor standards.
- 2352. — Defenses and anticipation thereof.
- 2353. — Responsive pleadings; answer and counterclaim.
- 2354. — Claims for declaratory relief.
- 2355. Evidence; affidavits.
- 2356. — In general.
- 2357. — Presumptions and burden of proof.
- 2358. — Weight and sufficiency.
- 2359. Hearing.
- 2360. Questions of law or fact.
- 2361. Findings and conclusions.
- 2362. Dismissal or other disposition.

V. SUITS AGAINST STATES; ELEVENTH AMENDMENT AND SOVEREIGN IMMUNITY.

- 2371. In general.
- 2372. Exceptions to immunity.
- 2373. — In general.
- 2374. — Abrogation by Congress.
 - (1). In general.
 - (2). Civil rights and discrimination in general.
 - (3). Labor and employment.
 - (4). Other particular matters.
- 2375. — Waiver by state; consent.
 - (1). In general.
 - (2). By constitution or statute.

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**V. SUITS AGAINST STATES; ELEVENTH
AMENDMENT AND SOVEREIGN
IMMUNITY.(Cont'd)**

- (3). Implied or constructive waiver or consent.
- (4). — In general.
- (5). — Litigation conduct.
- (6). — Participation in federal programs.
- 2376. — In rem proceedings.
- 2377. — Suits for injunctive or other prospective or equitable relief; Ex parte Young doctrine.
- 2378. — Other particular exceptions.
- 2379. What are suits against states; entities and individuals entitled to immunity.
- 2380. — In general.
- 2381. — Arms of the state in general.
- 2382. — State legislatures and legislators.
- 2383. — Political subdivisions.
 - (1). In general.
 - (2). Counties; parishes.
 - (3). Municipal corporations; cities.
 - (4). Port authorities.
- 2384. — Agencies, officers, and public employees.
- 2385. — Courts.
 - (1). In general.
 - (2). Judges and court personnel.
 - (3). Judicial councils.
 - (4). Receivers, executors, administrators, and other court appointees.
- 2386. — Law enforcement.
 - (1). In general.
 - (2). Sheriffs and deputies.
 - (3). Prosecutors and attorneys general.
 - (4). Public defenders.
 - (5). Prisons and jails.
 - (6). Parole boards and board members.
- 2387. — National Guard; state militia.
- 2388. — Education.
 - (1). In general.
 - (2). School boards; school districts.
 - (3). Higher education; colleges and universities.
- 2389. — Interstate compacts.
- 2390. — Territories.
- 2391. — Indians.

**V. SUITS AGAINST STATES; ELEVENTH
AMENDMENT AND SOVEREIGN
IMMUNITY.(Cont'd)**

- 2392. — Other particular entities and individuals.
- 2393. Objections, proceedings, and determination.

**VI. CONTROVERSIES BETWEEN CITIZENS
OF DIFFERENT STATES; DIVERSITY
JURISDICTION.**

(A) IN GENERAL.

- 2401. In general.
- 2402. Statutory provisions in general.
- 2403. Purpose of diversity jurisdiction.
- 2404. What constitutes citizenship in general.
- 2405. — In general.
- 2406. — Domicile and residence in general.

**(B) PARTICULAR CASES, CONTEXTS,
AND QUESTIONS.**

- 2411. In general.
- 2412. Particular parties, domicile or residence of in general.
- 2413. Change of domicile or residence in general.
- 2414. Students.
- 2415. Prisoners and fugitives.
- 2416. Governmental bodies and officers.
- 2417. Foreign states and citizens.
- 2418. Citizens of District of Columbia or territories.
- 2419. Citizens domiciled or residing abroad; stateless citizens.
- 2420. Indians.
- 2421. Vessels.
- 2422. Coplaintiffs and codefendants; complete diversity.
- 2423. — In general.
- 2424. — Particular cases.
- 2425. — Class and derivative actions.
- 2426. — Interpleader.
- 2427. Required, necessary, or indispensable parties.
- 2428. Nominal or formal parties; real parties in interest.
- 2429. Representative or fiduciary capacity; beneficiaries.
- 2430. — In general.

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**VI. CONTROVERSIES BETWEEN CITIZENS
OF DIFFERENT STATES; DIVERSITY
JURISDICTION.(Cont'd)**

- 2431. — Executors or administrators; personal representatives.
- 2432. — Guardians or conservators; guardians ad litem or next friends.
- 2433. Assignees.
- 2434. — In general.
- 2435. — Conveyance or transfer to give jurisdiction.
- 2436. Intervenor and substituted parties.
- 2437. Third-party practice.
- 2438. Corporations and other organizations.
- 2439. — In general.
- 2440. — Stockholders' citizenship.
- 2441. — Place of business.
- 2442. — Multiple citizenship.
- 2443. — Related or affiliated entities; parent and subsidiary.
- 2444. — Federally chartered organizations.
- 2445. — Banks and other financial institutions.
- 2446. — Insurers.
- 2447. — Unincorporated associations and partnerships.
- 2448. — Limited liability companies.
- 2449. — Residential associations.
- 2450. Improper or collusive making or joinder of parties.
- 2451. Rearrangement or realignment of parties.
- 2452. — In general.
- 2453. — Particular cases.
- 2454. Dismissal as to one or more parties.

**(C) OBJECTIONS, PROCEEDINGS,
AND DETERMINATION.**

- 2461. In general.
- 2462. Necessity of objection; power and duty of court.
- 2463. — In general.
- 2464. — Sua sponte determination.
- 2465. — Jurisdiction to determine jurisdiction.
- 2466. Timeliness issues.
- 2467. — In general.
- 2468. — Time as of which jurisdiction determined; change of citizenship pending suit.

**VI. CONTROVERSIES BETWEEN CITIZENS
OF DIFFERENT STATES; DIVERSITY
JURISDICTION.(Cont'd)**

- 2469. Waiver, estoppel, and consent.
- 2470. Pleadings.
- 2471. — In general.
- 2472. — Particular cases and contexts.
 - (1). In general.
 - (2). Corporations or other organizations as parties.
- 2473. — Amendments.
- 2474. Motions.
- 2475. Evidence; affidavits.
- 2476. — In general.
- 2477. — Presumptions and burden of proof.
- 2478. — Weight and sufficiency.
- 2479. Hearing.
- 2480. Questions of law or fact.
- 2481. Findings and conclusions.
- 2482. Dismissal or other disposition.

**VII. JURISDICTIONAL AMOUNT; AMOUNT
IN CONTROVERSY.**

- 2501. In general.
- 2502. Cases subject to pecuniary limitation.
- 2503. — In general.
- 2504. — Actions arising under federal constitution and laws in general.
- 2505. — Civil rights.
- 2506. — Labor and employment; seamen and longshoremen.
- 2507. Requisite amount or value.
- 2508. Matter in dispute and amount or value claimed or involved.
- 2509. — In general.
- 2510. — Punitive damages.
- 2511. — Interest and costs; attorney fees.
- 2512. — Penalties.
- 2513. Particular cases, claim or value.
- 2514. — In general.
- 2515. — Contract and tort claims.
- 2516. — Warranty claims.
- 2517. — Insurance claims.
- 2518. — Claims for declaratory or injunctive relief.
- 2519. — Arbitration.
- 2520. Aggregation or joinder of claims or demands.
- 2521. — In general.

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VII. JURISDICTIONAL AMOUNT; AMOUNT IN CONTROVERSY.(Cont'd)

- 2522. — Multiple parties, claims by or against in general.
- 2523. — Particular claims or demands.
 - (1). In general.
 - (2). Representative or class actions.
 - (3). Husband and wife or parent and child, claims by.
 - (4). Insurance claims.
- 2524. Fictitious or colorable claims.
- 2525. — In general.
- 2526. — Particular claims as fictitious or colorable.
- 2527. Part payment or reduction from other cause; effect of counterclaim.
- 2528. Effect of amount of recovery.
- 2529. Objections, proceedings, and determination.
- 2530. — In general.
- 2531. — Pleadings.
 - (1). In general.
 - (2). Particular cases.
- 2532. — Evidence; affidavits.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.

VIII. JURISDICTION OF ENTIRE CONTROVERSY; PENDENT AND SUPPLEMENTAL JURISDICTION.

- 2541. In general.
- 2542. Ancillary and incidental jurisdiction in general.
- 2543. Particular claims or causes of action.
- 2544. — In general.
- 2545. — Contract claims.
- 2546. — Tort claims.
- 2547. — State constitutional claims.
- 2548. — Claims under statutes, ordinances, or regulations.
- 2549. — Claims under foreign law.
- 2550. — Antitrust, unfair competition, and trade secret claims.
- 2551. Particular motions or proceedings.
- 2552. — In general.
- 2553. — Settlements.
- 2554. — Remedies and enforcement of judgment.

VIII. JURISDICTION OF ENTIRE CONTROVERSY; PENDENT AND SUPPLEMENTAL JURISDICTION.(Cont'd)

- 2555. — Relief from judgment.
- 2556. — Costs and fees.
- 2557. — Receivers.
- 2558. Coparties and new parties.
- 2559. — In general.
- 2560. — Pendent party jurisdiction.
- 2561. — Joinder and intervention.
- 2562. — Class actions.
- 2563. Counterclaims, cross-claims, and third-party practice.
- 2564. Effect of dismissal or other elimination of federal claims.
- 2565. Objections, proceedings, and determination.

IX. RIGHT TO DECLINE JURISDICTION; ABSTENTION.

Forum non conveniens, see XIV.

(A) IN GENERAL.

- 2571. In general.
- 2572. Discretion of court.
- 2573. Constitutional and federal questions.
- 2574. Federal-state relations, questions of state law, and parallel state proceedings.
- 2575. Pullman abstention.
- 2576. Burford abstention.
- 2577. Thibodaux abstention.
- 2578. Younger abstention.
- 2579. Colorado River abstention.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS.

- 2591. In general.
- 2592. Matters of procedure in general.
- 2593. — In general.
- 2594. — Class actions.
- 2595. — Declaratory judgment.
- 2596. — Injunctions.
- 2597. — Alternative dispute resolution.
- 2598. Civil rights and discrimination in general.
- 2599. Particular constitutional rights in general.
- 2600. Torts in general.
- 2601. Property in general.
- 2602. — In general.

170B. FEDERAL COURTS

**IX. RIGHT TO DECLINE JURISDICTION;
ABSTENTION.(Cont'd)**

- 2603. — Wills, estates, and trusts.
- 2604. — Zoning and land use.
- 2605. — Takings and eminent domain.
- 2606. Water.
- 2607. Governments and political subdivisions.
- 2608. Government property, facilities, and funds.
- 2609. Social Security, public assistance, and other government payments.
- 2610. Taxation.
- 2611. Labor and employment.
- 2612. — In general.
- 2613. — Public employment in general.
- 2614. — Pension and benefit plans.
- 2615. — Labor relations.
- 2616. — Wages, hours, and working conditions.
- 2617. — Railway labor and employment.
- 2618. — Employment discrimination.
- 2619. Education.
- 2620. Elections, voting, and political rights.
- 2621. — In general.
- 2622. — Reapportionment.
- 2623. War, national emergency, and national security.
- 2624. Contracts.
- 2625. Trade, business, and finance.
- 2626. — In general.
- 2627. — License and regulation of occupations.
 - (1). In general.
 - (2). Professional or other services; malpractice.
 - (3). Liquor; public amusement and entertainment.
- 2628. — Antitrust.
- 2629. — Banks and banking.
- 2630. — Insurers and insurance.
- 2631. — Securities regulation.
- 2632. — Mortgages, liens, and security interests.
- 2633. Intellectual property.
- 2634. Environment and health.
- 2635. Mental health.
- 2636. — In general.
- 2637. — Sex offenders.
- 2638. Motor vehicles.

**IX. RIGHT TO DECLINE JURISDICTION;
ABSTENTION.(Cont'd)**

- 2639. Carriers and public utilities.
- 2640. — In general.
- 2641. — Telecommunications.
- 2642. Families and children.
- 2643. Aliens, immigration, and citizenship.
- 2644. Corporations and other organizations.
- 2645. Criminal justice.
- 2646. — In general.
- 2647. — Arrest and pretrial detention.
- 2648. — Imprisonment and incidents thereof.
- 2649. Search, seizure, and confiscation.
- 2650. Bankruptcy.
- 2651. Indians and Indian lands.
- 2652. Racketeering.

(C) FEDERAL-FOREIGN RELATIONS AND QUESTIONS OF FOREIGN LAW; INTERNATIONAL ABSTENTION AND COMITY.

- 2661. In general.
- 2662. Particular cases, contexts, and questions.

(D) ABSTENTION AS BETWEEN FEDERAL COURTS.

- 2671. In general.
- 2672. Particular cases, contexts, and questions.

(E) OBJECTIONS, PROCEEDINGS, AND DETERMINATION.

- 2681. In general.
- 2682. Necessity of objection; power and duty of court.
- 2683. — In general.
- 2684. — Sua sponte determination.
- 2685. Timeliness issues.
- 2686. Waiver, estoppel, and consent.
- 2687. Pleadings and motions.
- 2688. Evidence; affidavits.
- 2689. — In general.
- 2690. — Presumptions and burden of proof.
- 2691. — Weight and sufficiency.
- 2692. Hearing.
- 2693. Questions of law or fact.
- 2694. Findings and conclusions.
- 2695. Dismissal or other disposition.
- 2696. — In general.

170B. FEDERAL COURTS

IX. RIGHT TO DECLINE JURISDICTION; ABSTENTION.(Cont'd)

- 2697. — Stay.
- 2698. — Reservation or retention of jurisdiction.

X. PERSONAL JURISDICTION.

For personal jurisdiction issues arising in special proceedings, see ALTERNATIVE DISPUTE RESOLUTION, FORFEITURES, INTERPLEADER, and other specific topics.

(A) IN GENERAL.

- 2701. In general.
- 2702. Necessity.
- 2703. How established; grounds.
- 2704. — In general.
- 2705. — Presence.
 - (1). In general.
 - (2). Physical presence.
 - (3). Domicile or residence.
- 2706. — Notice.
See also APPEARANCE and PROCESS.
- 2707. Particular cases, contexts, and questions.
- 2708. — In general.
- 2709. — Class actions.
- 2710. — Jurisdiction over nonparties.

(B) ACTIONS BY OR AGAINST NONRESIDENTS; "LONG-ARM" JURISDICTION.

- 2721. In general.
- 2722. Factors considered in general.
- 2723. — In general.
- 2724. — Contacts with forum.
 - (1). In general.
 - (2). Nature, number, frequency, and extent of contacts and activities.
 - (3). Purpose, intent, and foreseeability; purposeful availment.
- 2725. — Contacts with United States as a whole; nationwide jurisdiction.
- 2726. — Connection with litigation.
 - (1). In general.
 - (2). Unrelated contacts and activities; general jurisdiction.
 - (3). Related contacts and activities; specific jurisdiction.
- 2727. — Commercial contacts and activities; contracts and transactions.
 - (1). In general.

X. PERSONAL JURISDICTION.(Cont'd)

- (2). Business contacts and activities; transacting or doing business.
- 2728. — Internet use.
- 2729. Particular nonresident entities.
- 2730. — In general.
- 2731. — Associations and organizations.
- 2732. — Corporations and business organizations.
- 2733. — Unincorporated business organizations.
- 2734. — Limited liability companies.
- 2735. — Partnerships and joint ventures.
- 2736. — Non-profit corporations and organizations.
- 2737. Particular contexts and causes of action.
- 2738. — In general.
- 2739. — Property disputes; wills, trusts, and estates.
- 2740. — Contract disputes.
- 2741. — Torts in general.
Personal injury claims by seamen, see SEAMEN
⊡29(5.5).
- 2742. — Automobile accidents; nonresident motorists.
- 2743. — Manufacture, distribution, and sale of products.
 - (1). In general.
 - (2). Defective, dangerous, or injurious products; products liability.
- 2744. — Defamation.
- 2745. — Fraud, racketeering, and deceptive practices.
Antitrust claims, see ANTITRUST AND TRADE REGULATION ⊡969(2).
- 2746. — Professional services; malpractice.
- 2747. — Investment, finance, and credit.
- 2748. — Banks and banking.
- 2749. — Insurers and insurance.
- 2750. — Civil rights and discrimination.
- 2751. — Labor and employment.
 - (1). In general.
 - (2). Employment discrimination.
- 2752. — Trade secrets and intellectual property.

Copyright validity and infringement, see COPYRIGHTS AND INTELLECTUAL PROPERTY ⊡79(2). *Patent validity and infringement, see PATENTS* ⊡288. *Trademark claims, see TRADEMARKS* ⊡1558.5, 1559, 1560.

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X. PERSONAL JURISDICTION.(Cont'd)

- 2753. Agents, representatives, and other third parties.
- 2754. — In general.
- 2755. — Particular entities, contexts, and causes of action.
 - (1). In general.
 - (2). Associations and organizations.
 - (3). Corporations and business organizations.
 - (4). Unincorporated business organizations.
 - (5). Limited liability companies.
 - (6). Partnerships and joint ventures.
 - (7). Non-profit corporations and organizations.
 - (8). Banks and banking.
 - (9). Insurers and insurance.
- 2756. — Jurisdiction of agents and representatives.
 - (1). In general.
 - (2). Fiduciary duties in general; fiduciary shield.
 - (3). Tortious or intentional conduct; fraud and breach of fiduciary duties.
 - (4). Particular relationships.
 - (5). — In general.
 - (6). — Shareholders, members, or other individual owners of entities.
 - (7). — Officers, directors, and employees.
 - (8). — Public officers and employees; Bivens claims.
 - (9). — Conspiracy and co-conspirators.
- 2757. Related or affiliated entities; parent and subsidiary.
- 2758. Aliens and alien entities.
- 2759. — In general; factors considered.
- 2760. — Particular entities, contexts, and causes of action.

Foreign Sovereign Immunities Act, see INTERNATIONAL LAW ¶10.29.

 - (1). In general.
 - (2). Terrorism.
- 2761. — Agents, representatives, and other third parties.
 - (1). In general.

X. PERSONAL JURISDICTION.(Cont'd)

- (2). Jurisdiction of agents and representatives.
 - (3). Conspiracy and co-conspirators.
 - 2762. — Related or affiliated entities; parent and subsidiary.
 - 2763. Change of residence; actions against former residents.
 - 2764. Plaintiff's residence; nonresident plaintiffs.
 - 2765. — In general.
 - 2766. — Actions between nonresidents.
 - 2767. Mode of acquiring or exercising jurisdiction over nonresidents.

See also APPEARANCE and PROCESS.
 - 2768. Pendent personal jurisdiction.
- ### (C) OBJECTIONS, PROCEEDINGS, AND DETERMINATION.
- 2781. In general.
 - 2782. Necessity of objection; power and duty of court.
 - 2783. — In general.
 - 2784. — Sua sponte determination.
 - 2785. — Jurisdiction to determine personal jurisdiction.
 - 2786. Timeliness issues.
 - 2787. Waiver, estoppel, and consent.
 - 2788. Pleadings and motions.
 - 2789. Evidence; affidavits.
 - 2790. — In general.
 - 2791. — Presumptions and burden of proof.
 - 2792. — Weight and sufficiency.
 - 2793. Hearing.
 - 2794. Questions of law or fact.
 - 2795. Findings and conclusions.
 - 2796. Dismissal or other disposition.

XI. LOCATION OF FORUM; VENUE IN GENERAL.

See also venue lines in specific topics, particularly for venue issues arising in special proceedings or under special venue statutes.

(A) IN GENERAL.

- 2801. In general; relation to jurisdiction.
- 2802. Statutory provisions.

(B) GROUNDS; FACTORS CONSIDERED.

- 2811. In general.

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XI. LOCATION OF FORUM; VENUE IN GENERAL.(Cont'd)

- 2812. Diversity or federal question jurisdiction, effect of in general.
- 2813. Convenience in general.
- 2814. Availability of other district in general.
- 2815. Factors concerning parties.
- 2816. — In general.
- 2817. — Convenience of parties.
- 2818. — Plaintiff's choice of forum.
- 2819. — Parties' residence, domicile, or other connection to forum.
 - (1). In general.
 - (2). Plaintiffs in general.
 - (3). Defendants in general.
 - (4). Corporations and other entities.
 - (5). — In general.
 - (6). — Associations and unincorporated business organizations.
 - (7). — Partnerships.
 - (8). — Entities as plaintiffs.
 - (9). Prisoners and inmates.
 - (10). Executors and administrators; trusts and trustees; receivers.
 - (11). Public officials and employees.
 - (12). Other particular parties.
- 2820. — Place where defendant is found or is subject to personal jurisdiction.
- 2821. — Coparties in multiple districts.
 - (1). In general.
 - (2). Codefendants.
 - (3). Class actions.
- 2822. Factors concerning claim or cause of action.
- 2823. — In general.
- 2824. — Events or omissions giving rise to claim; where claim arose; transactional venue.
 - (1). In general.
 - (2). Evidence and witnesses.
 - (3). Claims arising in multiple districts.
- 2825. — Particular claims or causes of action.

See also venue lines in specific topics.

 - (1). In general.
 - (2). Contract disputes.
 - (3). Torts in general.
 - (4). Automobile accidents; nonresident motorists.

XI. LOCATION OF FORUM; VENUE IN GENERAL.(Cont'd)

- (5). Manufacture, distribution, and sale of products.
- (6). — In general.
- (7). — Defective, dangerous, or injurious products; products liability.
- (8). Defamation.
- (9). Fraud, racketeering, and deceptive practices.
- (10). Professional services; malpractice.
- (11). Investment, finance, and credit.
- (12). Banks and banking.
- (13). Insurers and insurance.
- (14). Civil rights and discrimination.
- (15). Labor and employment.
- (16). — In general.
- (17). — Employment discrimination.
- (18). Trade secrets and intellectual property.
- 2826. Actions concerning property.
- 2827. — In general.
- 2828. — In rem and quasi in rem actions.
- 2829. — Local actions.
- 2830. Multiple claims.
- 2831. — In general.
- 2832. — Pendent venue.
- 2833. Additional parties and ancillary claims.
- 2834. Aliens and those not resident in United States.
- 2835. — In general.
- 2836. — Resident aliens.
- 2837. — Alien plaintiffs.
- 2838. Multiple districts within state or divisions within district.
- 2839. — In general.
- 2840. — Corporations and other entities.
- 2841. Other particular grounds or factors.
- (C) OBJECTIONS, PROCEEDINGS,
AND DETERMINATION.**
- 2851. In general.
- 2852. Necessity of objection; power and duty of court.
- 2853. — In general.
- 2854. — Sua sponte determination.
- 2855. — Jurisdiction to determine venue.

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**XI. LOCATION OF FORUM; VENUE
IN GENERAL.(Cont'd)**

- 2856. Timeliness issues.
- 2857. Waiver, estoppel, and consent.
- 2858. Pleadings and motions.
- 2859. Evidence; affidavits.
- 2860. — In general.
- 2861. — Presumptions and burden of proof.
- 2862. — Weight and sufficiency.
- 2863. Hearing.
- 2864. Questions of law or fact.
- 2865. Findings and conclusions.
- 2866. Dismissal or other disposition.

XII. CHANGE OR TRANSFER OF VENUE.

(A) IN GENERAL; VENUE LAID IN PROPER FORUM.

- 2901. In general.
- 2902. Jurisdiction and power to transfer; consent and waiver.
- 2903. Discretion of court.
- 2904. Factors considered.
- 2905. — In general; convenience, fairness, and interest of justice.
- 2906. — Plaintiff's choice of forum; forum shopping.
- 2907. Particular determinations.
- 2908. — In general.
- 2909. — Antitrust cases.
- 2910. — Automobiles and aviation.
- 2911. — Contracts; insurance; sales.
- 2912. — Patents, copyrights, and trade regulation.
- 2913. — Seamen and maritime matters.
- 2914. — Securities regulation and internal corporate affairs.
- 2915. — Torts in general.

(B) VENUE LAID IN WRONG FORUM.

- 2921. In general.
- 2922. Particular determinations.

**(C) ELIGIBLE TRANSFEREE FORUMS; WHERE
ACTION MIGHT HAVE BEEN BROUGHT.**

- 2931. In general; necessity.
- 2932. How determined.
- 2933. — In general.

**XII. CHANGE OR TRANSFER
OF VENUE.(Cont'd)**

- 2934. — Amenability to process and personal jurisdiction.
- 2935. Particular determinations.

(D) PROCEEDINGS AND EFFECT OF CHANGE.

- 2941. In general.
- 2942. Time for application.
- 2943. Affidavits and evidence in general.
- 2944. Presumptions and burden of proof.
- 2945. Ruling or order and effect of change.
- 2946. Proceedings by transferee court; improper change.

**XIII. MULTI-DISTRICT LITIGATION;
TRANSFER FOR PRE-TRIAL
PROCEEDINGS.**

- 2951. In general.
- 2952. Particular transferable cases.
- 2953. — In general.
- 2954. — Antitrust cases.
- 2955. — Aviation cases.
- 2956. — Patents, copyrights and trade regulation.
- 2957. — Securities regulation and internal corporate affairs.
- 2958. Effect of transfer and subsequent proceedings.

XIV. FORUM NON CONVENIENS.

- 2971. In general.
- 2972. Discretion in general.
- 2973. Parties' choice of forum; forum-shopping.
- 2974. Place of accrual of cause of action.
- 2975. Residency of parties; state of incorporation.
- 2976. Convenience of parties and witnesses; location of evidence.
- 2977. Burden placed on court and public.
- 2978. Conflict of laws.
- 2979. Public and private interests; balancing interests.
- 2980. Alternate forum.
- 2981. — In general.
- 2982. — Availability and adequacy.
- 2983. — Amenability to process.
- 2984. — Enforceability of judgment in alternate forum.

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XIV. FORUM NON CONVENIENS.(Cont'd)

- 2985. — Scope and effect of pending proceedings.
- 2986. Objections, proceedings, and determination.
- 2987. — In general.
- 2988. — Necessity of objection; power and duty of court.
 - (1). In general.
 - (2). Sua sponte determination.
- 2989. — Timeliness issues.
- 2990. — Waiver, estoppel, and consent.
- 2991. — Pleadings and motions.
- 2992. — Evidence; affidavits.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 2993. — Hearing.
- 2994. — Questions of law or fact.
- 2995. — Findings and conclusions.
- 2996. — Disposition.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Form and sufficiency of order.
 - (4). Denial, dismissal, or transfer.
 - (5). Reconsideration.

XV. STATE OR FEDERAL LAWS AS RULES OF DECISION; ERIE DOCTRINE.

(A) IN GENERAL.

- 3001. In general.
- 3002. Diversity jurisdiction in general.
- 3003. Supplemental jurisdiction in general.
- 3004. Equitable jurisdiction in general.
- 3005. Substance or procedure; determinativeness.
- 3006. Sources of authority.
- 3007. — In general.
- 3008. — State courts and their decisions in general.
 - (1). In general.
 - (2). Highest court.
 - (3). Inferior courts.
- 3009. — Dicta.
- 3010. — State constitutions, statutes, regulations, and ordinances.
- 3011. Federal rules of decision.
- 3012. — In general.

XV. STATE OR FEDERAL LAWS AS RULES OF DECISION; ERIE DOCTRINE.(Cont'd)

- 3013. — Federal constitution, treaties, and statutes.
- 3014. — Incorporation or adoption of state law by federal law.
- 3015. — State court decisions interpreting or applying federal law.
- 3016. Matters of general jurisprudence; common law.
- 3017. — In general.
- 3018. — Federal common law.

(B) APPLICATION TO PARTICULAR MATTERS.

- 3021. In general.
- 3022. Procedural matters.
- 3023. — In general.
- 3024. — Dismissal or nonsuit in general.
- 3025. — Jurisdiction.
 - (1). In general.
 - (2). Case or controversy; mootness and ripeness.
 - (3). Abstention.
 - (4). Personal jurisdiction.
 - (5). Removability; fraudulent joinder to prevent removal.
- 3026. — Venue.
 - (1). In general; local action doctrine.
 - (2). Change or transfer of venue.
- 3027. — Forum non conveniens.
- 3028. — Abatement and revival.
- 3029. — Conflict of laws; choice of law.
 - (1). In general.
 - (2). Particular cases, contexts, and questions.
- 3030. — Preemption.
- 3031. — Parties; capacity to sue.
 - (1). In general.
 - (2). Standing.
 - (3). Class actions.
- 3032. — Process; notice of claim.
- 3033. — Pleading.
 - (1). In general.
 - (2). Anti-SLAPP laws.
 - (3). Affirmative defenses.
- 3034. — Limitations and laches.
 - (1). In general.
 - (2). Diversity cases in general.
 - (3). Federally created rights.

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XV. STATE OR FEDERAL LAWS AS RULES
OF DECISION; ERIE DOCTRINE.(Cont'd)

- (4). Supplemental jurisdiction.
- (5). Civil rights and discrimination cases.
- (6). Securities regulation actions.
- (7). Computation and tolling.
- 3035. — Estoppel and waiver.
- 3036. — Depositions and discovery.
- 3037. — Continuance and stay.
- 3038. — Judges.
- 3039. — Jury.
 - (1). In general.
 - (2). Selection and impaneling of jurors.
 - (3). Right to jury trial and waiver of right.
- 3040. — Counsel.
- 3041. — Trial.
- 3042. — Evidence.
 - (1). In general.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 3043. — Witnesses.
 - (1). In general.
 - (2). Privilege and confidentiality.
- 3044. — Expert evidence and witnesses.
- 3045. — Judgment; orders.
 - (1). In general.
 - (2). Judgment by confession or consent.
 - (3). Judgment by default and opening thereof.
 - (4). Declaratory judgment.
 - (5). Summary judgment.
 - (6). Conclusiveness; res judicata and collateral estoppel.
 - (7). Execution and enforcement.
- 3046. — Taking case from jury; judgment as a matter of law.
- 3047. — New trial, rehearing, or reconsideration.
- 3048. — Altering, amending, modifying, or vacating judgment or order.
- 3049. — Appealability; standard of review.
- 3050. — Indigent parties; proceedings in forma pauperis.

XV. STATE OR FEDERAL LAWS AS RULES
OF DECISION; ERIE DOCTRINE.(Cont'd)

- 3051. — Sanctions.
 - (1). In general.
 - (2). Discovery sanctions.
- 3052. — Compromise, settlement, and release.
- 3053. — Alternative dispute resolution.
- 3054. Remedial matters.
- 3055. — In general.
- 3056. — Election of remedies.
- 3057. — Damages or other monetary relief.
 - (1). In general.
 - (2). Punitive or exemplary damages.
- 3058. — Equity and equitable relief in general.
- 3059. — Appointment of receiver or guardian ad litem.
- 3060. — Injunction.
 - (1). In general.
 - (2). Preliminary injunction; temporary restraining order.
- 3061. — Costs and attorney fees.
- 3062. — Interest.
- 3063. Substantive matters.
- 3064. — In general.
- 3065. — Principal and agent relationship in general.
- 3066. — Constitutional rights, civil rights, and discrimination in general.
- 3067. — Torts.
 - (1). In general.
 - (2). Negligence, personal injuries, and death.
 - (3). Products liability.
- 3068. — Indemnity and contribution.
- 3069. — Property.
 - (1). In general.
 - (2). Deeds and leases.
 - (3). Mineral interests and easements.
 - (4). Replevin.
 - (5). Wills, estates, and trusts.
 - (6). Takings and eminent domain.
 - (7). Zoning and land use.
- 3070. — Water.
- 3071. — Government and political subdivisions.
 - (1). In general.
 - (2). Immunity.

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**XV. STATE OR FEDERAL LAWS AS RULES
OF DECISION; ERIE DOCTRINE.**(Cont'd)

- 3072. — Social security, public assistance, and other government payments.
- 3073. — Taxation.
- 3074. — Labor and employment.
 - (1). In general.
 - (2). Public employment in general.
 - (3). Pension and benefit plans.
 - (4). Labor relations.
 - (5). Arbitration of labor disputes.
 - (6). Wages, hours, and working conditions.
 - (7). Railway labor and employment.
 - (8). Employment discrimination.
 - (9). Workers' compensation.
- 3075. — Education.
- 3076. — Elections, voting, and political rights.
- 3077. — War, national emergency, and national security.
- 3078. — Contracts, sales, and assignments.
 - (1). In general.
 - (2). Public contracts.
 - (3). Federal contractors' bonds.
 - (4). Agreement as to place of bringing suit; forum selection clauses.
- 3079. — Trade, business, and finance.
 - (1). In general.
 - (2). Commerce.
 - (3). Warranties.
 - (4). Antitrust, unfair competition, and consumer protection.
 - (5). Banks and banking.
 - (6). Insurers and insurance.
 - (7). Securities regulation.
 - (8). Mortgages, liens, bills, notes, security interests, and debt collection.
 - (9). Bonds.
- 3080. — Intellectual property.
- 3081. — Environment and health.
- 3082. — Mental health.
- 3083. — Motor vehicles.
- 3084. — Carriers and public utilities.
 - (1). In general.
 - (2). Aviation.
 - (3). Railroads.
 - (4). Telecommunications.

**XV. STATE OR FEDERAL LAWS AS RULES
OF DECISION; ERIE DOCTRINE.**(Cont'd)

- 3085. — Families and children.
- 3086. — Aliens, immigration, and citizenship.
- 3087. — Corporations and other organizations.
- 3088. — Criminal justice.
 - (1). In general.
 - (2). Arrest and pretrial detention.
 - (3). Prosecutions.
 - (4). Sentencing.
 - (5). Imprisonment and incidents thereof.
- 3089. — Search, seizure, and confiscation.
- 3090. — Habeas corpus.
- 3091. — Forfeiture.
- 3092. — Indians and Indian lands.
- 3093. — Racketeering.

(C) UNSETTLED OR UNDECIDED QUESTIONS.

- 3101. In general.
- 3102. Conflicting and obsolete decisions; change of law.
- 3103. Anticipating or predicting state decision.
- 3104. Sources of authority; assumptions permissible.
- 3105. Withholding decision; certifying questions.
- 3106. — In general.
- 3107. — Particular questions.
- 3108. — Proceedings following certification.

XVI. SUPREME COURT.

(A) IN GENERAL.

- 3121. In general; establishment and organization.
- 3122. Jurisdiction, powers, and authority in general.
- 3123. Original jurisdiction.
- 3124. — In general.
- 3125. — Procedure in exercise thereof.
- 3126. Supervisory jurisdiction; writs in aid of jurisdiction.
- 3127. Certified questions.
- 3128. Appellate jurisdiction in general.
- 3129. Certiorari jurisdiction in general.

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XVI. SUPREME COURT.(Cont'd)

- 3130. — In general.
- 3131. — Effect of grant or refusal.
- 3132. Case or controversy requirement; justiciability; mootness and ripeness.

(B) DECISIONS REVIEWABLE.

- 3141. In general.
- 3142. Important, novel, or recurring questions in general.
- 3143. Conflicting decisions in general.
- 3144. Particular cases, contexts, and questions.
- 3145. — In general.
- 3146. — Criminal matters.
- 3147. — Habeas corpus.
- 3148. — Labor relations and standards; employers' liability.
- 3149. Review of federal district courts.
- 3150. — In general; decisions directly appealable.
- 3151. — Criminal prosecutions in general.
- 3152. — Actions by United States; Expe-diting Act.
- 3153. — Three-judge courts.
- 3154. — Constitutional questions.
- 3155. Review of specialized federal courts.
- 3156. — In general.
- 3157. — Court of Claims.
- 3158. — Former Circuit Courts (abolished in 1911).
- 3159. Review of territorial courts.
- 3160. Review of District of Columbia courts.
- 3161. Review of state courts.
- 3162. — In general.
- 3163. — Necessity and sufficiency of federal question in general.
- 3164. — Particular cases, contexts, and questions.
 - (1). In general.
 - (2). Validity of state constitution or statutes.
 - (3). Criminal matters.
 - (4). Habeas corpus.

(C) FINALITY OF DETERMINATION BELOW.

- 3171. In general.
- 3172. Review of federal district courts.
- 3173. Review of specialized federal courts.
- 3174. Review of territorial courts.

XVI. SUPREME COURT.(Cont'd)

- 3175. Review of District of Columbia courts.
- 3176. Review of state courts.

(D) PRESENTATION OF QUESTIONS BELOW OR ON REVIEW; RECORD; WAIVER.

- 3181. In general.
- 3182. Review of federal district courts.
- 3183. Review of specialized federal courts.
- 3184. Review of territorial courts.
- 3185. Review of District of Columbia courts.
- 3186. Review of state courts.

(E) PROCEEDINGS.

- 3191. In general.
- 3192. Proceedings to obtain review.
- 3193. — In general.
- 3194. — Review of federal district courts.
- 3195. — Review of specialized federal courts.
- 3196. — Review of territorial courts.
- 3197. — Review of District of Columbia courts.
- 3198. — Review of state courts.
- 3199. Proceedings in forma pauperis.
- 3200. Persons entitled to seek review or assert arguments; parties.
- 3201. Cross-appeal or cross-petition.
- 3202. Briefs and oral argument.
- 3203. Scope and extent of review.
- 3204. — In general.
- 3205. — Review of federal district courts.
- 3206. — Review of specialized federal courts.
- 3207. — Review of territorial courts.
- 3208. — Review of District of Columbia courts.
- 3209. — Review of state courts.
 - (1). In general.
 - (2). Questions of fact, verdicts, and findings.
- 3210. Harmless or reversible error.
- 3211. Determination and disposition of cause.
- 3212. — In general.
- 3213. — Dismissal or other summary disposition.
 - (1). In general.
 - (2). Improvident grant of review.
 - (3). Grant, vacate, remand (GVR) orders.

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XVI. SUPREME COURT.(Cont'd)

- 3214. — Affirmance.
- 3215. — Modification.
- 3216. — Reversal, vacation, and remand.
 - (1). In general.
 - (2). Particular cases.
- 3217. — Rehearing.
- 3218. — Mandate; effect of decision in lower court; proceedings on remand.
- 3219. Stay pending review or disposition by Supreme Court.
- 3220. — In general.
- 3221. — Stay by lower court.
- 3222. Single justice orders.

XVII. COURTS OF APPEALS.

(A) IN GENERAL.

- 3231. In general; creation and constitution.
- 3232. Rules and conduct of business.
- 3233. Supervisory jurisdiction in general.
- 3234. Remedial writs in general.
- 3235. Injunction or restraining order.
- 3236. Mandamus.
See also MANDAMUS. Prohibition, see PROHIBITION.
- 3237. — In general.
- 3238. — Particular cases, contexts, and questions.
- 3239. — Orders relating to removal, transfer, or venue.

(B) APPELLATE JURISDICTION AND PROCEDURE IN GENERAL.

- 3251. In general.
- 3252. Determination of question of jurisdiction.
- 3253. Persons entitled to seek review or assert arguments; parties; standing.
- 3254. — In general.
- 3255. — Particular persons.
- 3256. — Asserting claims of others.
- 3257. — Intervention or addition of new parties on appeal.
- 3258. — Appellees; necessity of filing cross-appeal.
- 3259. Estoppel to allege error; invited error.
- 3260. — In general.
- 3261. — Particular errors.
- 3262. Amendments and additional proofs.

(C) DECISIONS REVIEWABLE.

1. IN GENERAL.

- 3271. In general.
- 3272. Appeal as of right in general.
- 3273. Courts or other decision-makers subject to review.
- 3274. Finality.
- 3275. — In general; necessity.
- 3276. — What constitutes finality in general.
- 3277. Interlocutory and collateral orders.
- 3278. — In general.
- 3279. — Discretion in allowing interlocutory appeals in general.
- 3280. Mode of rendition or entry.

2. PARTICULAR DECISIONS, MATTERS, OR QUESTIONS AS REVIEWABLE.

- 3291. In general.
- 3292. Dismissal or nonsuit in general.
- 3293. Defenses in general.
- 3294. Jurisdiction, venue, and forum non conveniens.
- 3295. Immunity.
- 3296. Conditions precedent.
- 3297. Parties and process.
- 3298. — In general.
- 3299. — Class actions.
- 3300. Pleading.
- 3301. — In general.
- 3302. — Counterclaims, cross-claims, and third-party complaints.
- 3303. — Judgment on pleadings.
- 3304. Limitations and laches.
- 3305. Preliminary proceedings; depositions and discovery.
- 3306. Continuance and stay.
- 3307. Consolidation and severance.
- 3308. Judge.
- 3309. Jury.
- 3310. — In general.
- 3311. — Selection and impaneling of jurors.
- 3312. Counsel.
- 3313. Trial.
- 3314. Evidence and witnesses.
- 3315. Instructions.
- 3316. Verdict, findings, and conclusions.
- 3317. Judgment.

170B. FEDERAL COURTS

XVII. COURTS OF APPEALS.(Cont'd)

- 3318. — In general.
- 3319. — Finality of judgment.
 - (1). In general; necessity.
 - (2). What constitutes final judgment.
- 3320. — Mode of rendition or entry of judgment.
- 3321. — Judgment by confession or consent.
- 3322. — Default judgment and opening thereof.
- 3323. — Summary judgment.
 - (1). In general.
 - (2). As to immunity.
- 3324. — Enforcement of judgment.
- 3325. Taking case or question from jury; judgment as a matter of law.
- 3326. New trial, rehearing, or reconsideration.
- 3327. Amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3328. Indigent parties; proceedings in forma pauperis.
- 3329. Sanctions.
- 3330. Compromise and settlement.
- 3331. Remedial matters.
- 3332. — In general.
- 3333. — Damages or other monetary relief.
- 3334. — Injunction.
 - (1). In general.
 - (2). Preliminary injunction; temporary restraining order.
- 3335. — Costs and attorney fees.
- 3336. — Interest.

3. EFFECT OF UNRESOLVED OR PENDING ISSUES.

- 3351. In general.
- 3352. Particular issues.
- 3353. — In general.
- 3354. — Damages.
- 3355. — Interest.
- 3356. — Fees and costs.
- 3357. — Sanctions.
- 3358. Multiple claims or parties.
- 3359. — In general.
- 3360. — Particular cases.

4. CERTIFICATION AND LEAVE TO APPEAL.

- 3371. In general.
- 3372. Particular actions and rulings.
- 3373. — In general.
- 3374. — Multiple parties.
- 3375. — Class actions.
- 3376. — Multiple claims.
- 3377. — Summary judgment.
- 3378. Petition or application; time.
- 3379. Hearing, determination, and review.

(D) PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.

1. IN GENERAL.

- 3391. In general; necessity.
- 3392. Mode and sufficiency of presentation.
- 3393. Effect of failure to preserve error.
- 3394. — In general.
- 3395. — Plain error.

2. PARTICULAR GROUNDS OF REVIEW.

Mode and sufficiency of presentation, see ¶3392.

- 3401. In general.
- 3402. Matters of substance.
- 3403. — In general.
- 3404. — Constitutional questions.
- 3405. — Defenses.
- 3406. Matters of procedure.
- 3407. — In general.
- 3408. — Dismissal or nonsuit in general.
- 3409. — Organization and jurisdiction of lower court; venue.
- 3410. — Parties, process, and notice.
- 3411. — Pleading.
- 3412. — Limitations and laches.
- 3413. — Preliminary proceedings; depositions and discovery.
- 3414. — Trial.
- 3415. — Evidence and witnesses.
 - (1). In general.
 - (2). Admission or exclusion of evidence.
 - (3). Sufficiency of evidence.
- 3416. — Instructions.
 - (1). In general.
 - (2). Requests and failure to give instructions; refusal of requested charge.
- 3417. — Verdict or findings.
- 3418. — Judgment and relief.

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XVII. COURTS OF APPEALS.(Cont'd)

- (1). In general.
- (2). Summary judgment.

- 3419. — Taking case or question from jury; judgment as a matter of law.
- 3420. — New trial, rehearing, or reconsideration.
- 3421. — Amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3422. — Costs and attorney fees.

(E) PROCEEDINGS FOR TRANSFER OF CASE.

- 3431. In general.
- 3432. Joinder or consolidation of appeals.
- 3433. Time of taking proceeding or filing notice of appeal.
- 3434. — In general.
- 3435. — Effect of delay and excuses in general.
- 3436. — Commencement and running of time in general.
- 3437. — Extension of time.
 - (1). In general.
 - (2). By agreement or court order.
 - (3). By motions after judgment in general.
 - (4). By motions to vacate, amend, or modify judgment.
 - (5). By motions for new trial or rehearing.
- 3438. — Premature appeal.
- 3439. Payment of fees or costs; bonds or other security in general.
- 3440. Proceedings in forma pauperis.
- 3441. — In general.
- 3442. — Grounds for permitting or refusing.
- 3443. — Appointment of counsel on appeal.
- 3444. — Right to free transcript.
- 3445. — Affidavits and proceedings.
- 3446. Notice of appeal, writ of error, or citation.
- 3447. — In general; necessity.
- 3448. — Requisites and sufficiency; defects.
- 3449. — Filing, service, and return.
- 3450. Entry, docketing, and appearance.

XVII. COURTS OF APPEALS.(Cont'd)

- 3451. Effect of transfer of cause or proceedings therefor.
- 3452. — In general.
- 3453. — Interlocutory or defective appeal.
- 3454. — Amendment of, vacation of, or relief from judgment.

(F) SUPERSEDEAS OR STAY OF PROCEEDINGS.

- 3461. In general.
- 3462. Injunction and temporary restraining order cases.
- 3463. Other particular cases.
- 3464. Bond or security.

(G) RECORD.

- 3471. In general.
- 3472. Matters to be shown by record.
- 3473. Scope and contents of record.
- 3474. Transcript of proceedings.
- 3475. — In general.
- 3476. — Order or designation and notice.
- 3477. Statement, description, or narrative of evidence or proceedings.
- 3478. Transmission and filing of record.
- 3479. Defects and objections.
- 3480. — In general.
- 3481. — Amendment, correction, or supplementation.
- 3482. Conclusiveness and impeachment.
- 3483. Questions presented for review.
- 3484. — In general.
- 3485. — Conduct of trial.
- 3486. — Evidence; witnesses.
- 3487. — Instructions.
- 3488. — Verdict, findings, or decision; amount of recovery; costs and fees.
- 3489. — Judgment; new trial or rehearing.
- 3490. Matters not apparent of record.
- 3491. — In general.
- 3492. — Matters appearing otherwise than by record in general; judicial notice.
- 3493. — Briefs.
- 3494. — Opinion of lower court.

(H) BRIEFS.

- 3501. In general.
- 3502. Statement of case or facts; appendix.

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XVII. COURTS OF APPEALS.(Cont'd)

- 3503. Specification of errors; points and arguments.
- 3504. Defects, objections, and amendments; striking brief.
- 3505. Failure to file or serve, or to file or serve in time.

(I) DISMISSAL, WITHDRAWAL, OR ABANDONMENT.

- 3511. In general.
- 3512. Grounds for involuntary dismissal in general.
- 3513. Want of actual controversy; mootness and ripeness.
- 3514. — In general.
- 3515. — Particular cases.
- 3516. Want of jurisdiction.
- 3517. Proceedings frivolous or for delay.
- 3518. Review unnecessary or ineffectual.
- 3519. Dismissal on court's own motion.
- 3520. Motion for dismissal; hearing and determination.
- 3521. Order and effect of dismissal.
- 3522. — In general.
- 3523. — Reinstatement of appeal.

(J) HEARING.

- 3531. In general.
- 3532. Preliminary proceedings; dockets and calendars.
- 3533. Hearing without argument; summary calendar and disposition without opinion.
- 3534. Rehearing and reargument.

(K) SCOPE AND EXTENT OF REVIEW.

1. IN GENERAL.

- 3541. In general.
- 3542. Matters or evidence considered.
- 3543. Questions considered.
- 3544. — In general.
- 3545. — Matters not necessary to decision in review.
 - (1). In general.
 - (2). Specific questions.
- 3546. — Interlocutory, collateral, and supplementary proceedings and questions; pendent appellate jurisdiction.
 - (1). In general.

XVII. COURTS OF APPEALS.(Cont'd)

- (2). On appeal from final judgment.
- (3). On separate appeal from interlocutory judgment or order.
- 3547. Review dependent on mode of trial in lower court.
- 3548. Theory and grounds of decision of lower court.
- 3549. — In general.
- 3550. — Rulings as law of case.
- 3551. — Reasons for decision.
- 3552. — Grounds for sustaining decision not relied upon or considered.

2. STANDARD OF REVIEW.

- 3561. In general.
- 3562. De novo review in general.
- 3563. Discretion of lower court in general.
- 3564. — In general.
- 3565. — Abuse of discretion in general.
- 3566. Questions of law in general.
- 3567. — In general.
- 3568. — State or local law in general.
- 3569. — Territorial courts in general.
- 3570. — Diversity cases in general.
- 3571. Questions of fact in general.
- 3572. Mixed questions of law and fact in general.
- 3573. Constitutional questions in general.
- 3574. Statutes, regulations, and ordinances, questions concerning in general.
- 3575. Treaty questions in general.
- 3576. Procedural matters.
- 3577. — In general.
- 3578. — Dismissal or nonsuit in general.
- 3579. — What law governs and choice of law in general.
- 3580. — Preemption in general.
- 3581. — Jurisdiction.
 - (1). In general.
 - (2). Supplemental jurisdiction.
 - (3). Abstention.
 - (4). Personal jurisdiction.
- 3582. — Venue.
 - (1). In general.
 - (2). Change or transfer of venue.
- 3583. — Forum non conveniens.
- 3584. — Conditions precedent.
- 3585. — Parties.

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XVII. COURTS OF APPEALS.(Cont'd)

- (1). In general.
- (2). Standing.
- (3). Class actions.
- 3586. — Process.
- 3587. — Pleading.
 - (1). In general.
 - (2). Judgment on the pleadings.
- 3588. — Limitations and laches.
- 3589. — Estoppel and waiver.
- 3590. — Preliminary proceedings.
- 3591. — Depositions and discovery.
- 3592. — Continuance and stay.
- 3593. — Consolidation and severance.
- 3594. — Judge.
- 3595. — Jury.
 - (1). In general.
 - (2). Selection and impaneling of jurors.
- 3596. — Counsel.
- 3597. — Trial.
- 3598. — Evidence.
 - (1). In general.
 - (2). Reception of evidence.
 - (3). — In general.
 - (4). — Admission or exclusion in general.
 - (5). — Probative value and prejudicial effect.
 - (6). Weight or preponderance of evidence in general.
 - (7). Inferences from evidence.
 - (8). Conflicting or undisputed evidence.
 - (9). Substantial evidence.
- 3599. — Witnesses.
 - (1). In general.
 - (2). Competency and examination.
 - (3). Credibility and impeachment.
- 3600. — Expert evidence and witnesses.
- 3601. — Instructions.
- 3602. — Verdict.
- 3603. — Findings.
 - (1). In general.
 - (2). "Clearly erroneous" standard of review in general.
 - (3). Findings of referee or master.
 - (4). Nature of evidence supporting findings.

XVII. COURTS OF APPEALS.(Cont'd)

- (5). Conflicting or undisputed evidence.
- (6). What constitutes clear error, and effect thereof.
- (7). Definite and firm conviction of mistake.
- 3604. — Judgment.
 - (1). In general.
 - (2). Judgment by confession or consent.
 - (3). Default judgment and opening thereof.
 - (4). Summary judgment.
 - (5). Conclusiveness; res judicata and collateral estoppel.
 - (6). Enforcement of judgment.
- 3605. — Taking case or question from jury; judgment as a matter of law.
- 3606. — New trial, rehearing, or reconsideration.
 - (1). In general.
 - (2). Insufficiency of evidence.
 - (3). Inadequate or excessive damages.
 - (4). Newly discovered evidence.
- 3607. — Altering, amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3608. — Proceedings for appeal.
- 3609. — Indigent parties; proceedings in forma pauperis.
 - (1). In general.
 - (2). Counsel.
- 3610. — Sanctions.
 - (1). In general.
 - (2). Discovery sanctions.
- 3611. — Compromise and settlement.
 - (1). In general.
 - (2). Class actions.
- 3612. Remedial matters.
- 3613. — In general.
- 3614. — Damages or other monetary relief.
 - (1). In general.
 - (2). Punitive damages.
- 3615. — Equity and equitable relief in general.
- 3616. — Injunction.
 - (1). In general.

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XVII. COURTS OF APPEALS.(Cont'd)

- (2). Preliminary injunction; temporary restraining order.
- 3617. — Costs and attorney fees.
- 3618. — Interest.
- 3619. Substantive matters.
- 3620. — In general.
- 3621. — Constitutional rights, civil rights, and discrimination in general.
- 3622. — Torts in general.
- 3623. — Property in general.
- 3624. — Water.
- 3625. — Governments and political subdivisions.
 - (1). In general.
 - (2). Immunity.
 - (3). Public records or information.
- 3626. — Government property, facilities, and funds.
- 3627. — Social Security, public assistance, and other government payments.
 - (1). In general.
 - (2). Medical assistance.
 - (3). Public housing.
- 3628. — Taxation.
- 3629. — Labor and employment.
 - (1). In general.
 - (2). Public employment in general.
 - (3). Pension and benefit plans.
 - (4). Labor relations.
 - (5). Wages, hours, and working conditions.
 - (6). Railway labor and employment.
 - (7). Employment discrimination.
- 3630. — Education.
- 3631. — Elections, voting, and political rights.
- 3632. — War, national emergency, and national security.
- 3633. — Contracts.
 - (1). In general.
 - (2). Public contracts.
- 3634. — Trade, business, and finance.
 - (1). In general.
 - (2). Commerce.
 - (3). Antitrust.
 - (4). Banks and banking.
 - (5). Insurers and insurance.
 - (6). Securities regulation.

XVII. COURTS OF APPEALS.(Cont'd)

- (7). Mortgages, liens, and security interests.
- 3635. — Intellectual property.
- 3636. — Environment and health.
- 3637. — Mental health.
- 3638. — Motor vehicles.
- 3639. — Carriers and public utilities.
 - (1). In general.
 - (2). Telecommunications.
- 3640. — Families and children.
- 3641. — Aliens, immigration, and citizenship.
 - (1). In general.
 - (2). Tort claims.
- 3642. — Foreign states or sovereigns.
- 3643. — Corporations and other organizations.
- 3644. — Criminal justice.
 - (1). In general.
 - (2). Arrest and pretrial detention.
 - (3). Imprisonment and incidents thereof.
- 3645. — Search, seizure, and confiscation.
- 3646. — Indians and Indian lands.
- 3647. — Racketeering.

3. PRESUMPTIONS.

- 3661. In general.
- 3662. Burden of showing error.
- 3663. Matters not shown by record.
- 3664. Pleadings; dismissal.
- 3665. — In general.
- 3666. — Judgment or dismissal on the pleadings.
- 3667. — Dismissal for failure to state a claim.
- 3668. — Dismissal for failure to plead with particularity.
- 3669. — Dismissal for lack of jurisdiction.
- 3670. Conduct of trial in general; evidence; judgment.
- 3671. Instructions.
- 3672. Taking case or question from jury; judgment as a matter of law.
- 3673. Verdict.
- 3674. Findings of court or referee.
- 3675. Summary judgment.

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4. HARMLESS AND REVERSIBLE ERROR.

- 3681. In general.
- 3682. Necessity that error be prejudicial.
- 3683. — In general.
- 3684. — Cumulative error.
- 3685. Presumptions and burden of showing prejudice.
- 3686. Particular errors as harmless or prejudicial.
- 3687. — In general.
- 3688. — Dismissal or nonsuit in general.
- 3689. — Jurisdiction.
- 3690. — Venue; forum non conveniens.
- 3691. — Conditions precedent.
- 3692. — Parties and process.
- 3693. — Pleading.
- 3694. — Limitations and laches.
- 3695. — Preliminary proceedings; depositions and discovery.
- 3696. — Continuance, stay, consolidation, and severance.
- 3697. — Judge.
- 3698. — Jury.
 - (1). In general.
 - (2). Selection and impaneling of jurors.
- 3699. — Counsel.
- 3700. — Trial.
 - (1). In general.
 - (2). Argument and conduct of counsel.
 - (3). Remarks and conduct of trial judge.
 - (4). Submission of questions or interrogatories to jury.
- 3701. — Evidence.
 - (1). In general.
 - (2). Admission of evidence.
 - (3). — In general.
 - (4). — Nonjury cases.
 - (5). — Cumulative evidence; facts otherwise established.
 - (6). — Irrelevant evidence and hearsay.
 - (7). — Expert and opinion testimony.
 - (8). Exclusion of evidence.
 - (9). — In general.
 - (10). — Cumulative evidence and facts otherwise established.
- 3702. — Witnesses.

XVII. COURTS OF APPEALS.(Cont'd)

- 3703. — Instructions.
 - (1). In general.
 - (2). Applicability to issues and evidence.
 - (3). Instructions on evidence.
 - (4). Failure or refusal to instruct; modification of request.
 - (5). Error cured by verdict or judgment.
- 3704. — Verdict, findings, and conclusions.
- 3705. — Judgment.
 - (1). In general.
 - (2). Default judgment and opening thereof.
 - (3). Summary judgment.
 - (4). Conclusiveness; res judicata and collateral estoppel.
- 3706. — Taking case or question from jury; judgment as a matter of law.
- 3707. — New trial, rehearing, or reconsideration.
- 3708. — Amending, modifying, or vacating judgment or order; proceedings after judgment.
- 3709. — Indigent parties; proceedings in forma pauperis.
- 3710. — Sanctions.
- 3711. — Compromise and settlement.
- 3712. — Remedial matters.
 - (1). In general.
 - (2). Damages or other monetary relief.
 - (3). Equitable relief; injunctions.
 - (4). Costs and attorney fees.
 - (5). Interest.
- 3713. — Matters of substantive law.

5. WAIVER OF ERROR IN APPELLATE COURT.

- 3731. In general.
- 3732. Failure to mention or inadequacy of treatment of error in notice of appeal.
- 3733. Failure to mention or inadequacy of treatment of error in appellate briefs.
- 3734. Lack or inadequacy of citations to record.
- 3735. Lack or inadequacy of trial transcript.
- 3736. Lack or inadequacy of discussion of error in oral argument.

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XVII. COURTS OF APPEALS.(Cont'd)

3737. Concessions inconsistent with existence of error.

6. SUBSEQUENT APPEALS.

3751. In general.

3752. Former decision as law of the case.

(L) DETERMINATION AND DISPOSITION OF CAUSE.

3761. In general.

3762. Effect of changes in law or facts.

3763. — In general.

3764. — Intervening judicial decision.

3765. Affirmance.

3766. — In general.

3767. — Particular cases.

3768. — Divided court.

3769. — On condition; remittitur.

3770. — Motion to affirm, procedure, and effect of affirmance.

3771. Modification.

3772. Reversal or vacation of judgment in general.

3773. — In general.

3774. — Procedure and effect; summary reversal.

3775. Rendering judgment; dismissing claims or parties.

3776. Directing judgment in lower court.

3777. — In general.

3778. — Directing judgment of dismissal.

3779. Directing new trial or other proceedings below; remand.

3780. — In general.

3781. — Defective proceedings.

3782. — Defective record or transcript.

3783. — Issues or questions not passed on below.

3784. — Changes in law or facts pending appeal.

3785. — Need for further evidence, findings, or conclusions.

3786. — Amendment as to parties or pleading.

3787. — All or part of issues or parties, new trial on.

3788. — Determination of damages, costs, or interest; remittitur.

3789. Reserving judgment and retaining jurisdiction.

XVII. COURTS OF APPEALS.(Cont'd)

3790. Rendition, form, and entry of decision by Court of Appeals.

3791. — In general.

3792. — Amendment, modification, or setting aside.

3793. Effect of decision in lower court.

3794. — In general.

3795. — Law of the case in general.

3796. — Mandate.

3797. Powers, duties, and proceedings of lower court after remand.

3798. — In general.

3799. — Reassignment to new judge on remand.

3800. — Amendments as to pleading and parties.

3801. — Allowance of interest, attorney fees, and costs.

3802. — Rendition and entry of judgment as directed.

3803. — New trial.

3804. Jurisdiction and proceedings of Court of Appeals after remand.

3805. — In general.

3806. — Recalling the mandate.

3807. — Clarification and amendment of mandate.

XVIII. THREE-JUDGE COURTS.

Review by Supreme Court, see XVI.

3821. In general.

3822. Unconstitutional state laws or action, injunction against enforcement in general.

3823. Unconstitutional federal laws or action, injunction against enforcement in general.

3824. Substantiality of challenge in general.

3825. Particular laws or action, and particular challenges thereto.

3826. — In general.

3827. — Equal protection, civil rights, and discrimination in general.

3828. — Supremacy Clause and preemption in general.

3829. — Criminal matters; obscenity laws.

3830. — Imprisonment and incidents thereof.

3831. — Elections and reapportionment.

170B. FEDERAL COURTS

XVIII. THREE-JUDGE COURTS. (Cont'd)

- 3832. — Armed services.
- 3833. — Social Security and public assistance.
- 3834. — Interstate Commerce Commission orders.
- 3835. Statewide applicability; local or municipal laws or action.
- 3836. Necessity that state officer be involved.
- 3837. Necessity that injunction be sought and available.
- 3838. Exhaustion of other remedies.
- 3839. Effect of joining nonjurisdictional claims.
- 3840. Application for such court and determination.
- 3841. Dismissal by single judge.
- 3842. Composition of court, powers, and procedure.

XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS.

Territorial courts and other courts, see COURTS ¶540. *District of Columbia local courts and other courts, see COURTS* ¶550.

(A) IN GENERAL.

- 3851. In general.
- 3852. Comity in general.

(B) PARTICULAR CASES, CONTEXTS, AND QUESTIONS.

- 3861. In general.
- 3862. Administrative agencies and proceedings in general.
- 3863. Constitutional rights, civil rights, and discrimination in general.
- 3864. Torts in general.
- 3865. Property.
- 3866. — In general.
- 3867. — In rem and quasi in rem proceedings.
- 3868. — Takings, eminent domain, and inverse condemnation.
- 3869. — Forfeiture and illegal exaction.
- 3870. Water.
- 3871. Governments and political subdivisions.
- 3872. — In general.
- 3873. — Claims against United States in general.

XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS. (Cont'd)

- 3874. — Controversies between two or more states.
- 3875. — Ambassadors, other public ministers, consuls, or vice consuls of foreign states.
- 3876. — Suits between United States and a state.
- 3877. — Actions or proceedings by a state against citizens of another state or against aliens.
- 3878. — Public records or information.
- 3879. Government property, facilities, and funds.
- 3880. — In general.
- 3881. — Postal matters.
- 3882. Social Security, public assistance, and other government payments.
- 3883. Taxation.
- 3884. — In general.
- 3885. — Customs duties.
- 3886. Labor and employment.
- 3887. — In general.
- 3888. — Public employment.
- 3889. — Employment discrimination.
- 3890. Education.
- 3891. Elections, voting, and political rights.
- 3892. War, national emergency, and national security.
- 3893. — In general.
- 3894. — Armed services.
- 3895. — Veterans.
- 3896. — Terrorism.
- 3897. Contracts.
- 3898. — In general.
- 3899. — Public contracts.
- 3900. Trade or business.
- 3901. — In general.
- 3902. — Securities.
- 3903. — Insurance.
- 3904. — Banking and finance.
- 3905. — Mining.
- 3906. Intellectual property.
- 3907. Environment and health.
- 3908. — In general.
- 3909. — Atomic energy and nuclear waste.
- 3910. Carriers and public utilities.
- 3911. — In general.

171. FENCES

XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS.(Cont'd)

- 3912. — Aviation.
- 3913. — Railroads; national trail system.
- 3914. — Telecommunications.
- 3915. Aliens, immigration, and citizenship.
- 3916. Indians and Indian lands.

(C) PENDENCY AND SCOPE OF PRIOR PROCEEDINGS; FIRST-FILED RULE.

- 3931. In general.
- 3932. Duplicative actions in general.
- 3933. Anticipatory actions in general.
- 3934. Particular cases, contexts, and questions.
- 3935. — In general.
- 3936. — Constitutional rights, civil rights, and discrimination in general.
- 3937. — Torts in general.
- 3938. — Property.
 - (1). In general.
 - (2). Property in custody of the law; custodia legis.
 - (3). In rem and quasi in rem proceedings.
- 3939. — Taxation.
- 3940. — Labor and employment.
- 3941. — Contracts.
 - (1). In general.
 - (2). Public contracts.
- 3942. — Trade, business, and finance.
- 3943. — Intellectual property.
- 3944. — Environment and health.
- 3945. — Telecommunications.
- 3946. Court of Federal Claims cases.
- 3947. — In general.
- 3948. — Contracts.
- 3949. — Torts in general.
- 3950. — Property.
- 3951. — Labor and employment.
- 3952. — Armed services; veterans.
- 3953. — Taxation.
- 3954. — Indians.
- 3955. Injunction against proceedings.
- 3956. — In general.
- 3957. — Particular cases, contexts, and questions.

XIX. EXCLUSIVE, CONCURRENT, AND CONFLICTING JURISDICTION AS BETWEEN FEDERAL COURTS.(Cont'd)

- 3958. Review of decisions by another federal court in a prior action.

(D) TRANSFER AND CERTIFICATION OF CASES.

- 3971. In general; transfer between divisions.
- 3972. Administrative agency cases.
- 3973. Other particular cases, contexts, and questions.

171. FENCES

SUBJECTS INCLUDED

Structures for inclosing lands in general
Statutory provisions relating thereto
Rights, duties and liabilities of proprietors or occupants of land in respect of such structures
Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adjoining landowners' reciprocal rights and duties generally, see ADJOINING LANDOWNERS
Boundaries, fences as indicating, see BOUNDARIES
Excavations or dangerous premises or machinery, fencing of, see LABOR AND EMPLOYMENT, MINES AND MINERALS, NEGLIGENCE
Railroads, fencing, see RAILROADS

- 1. Duty to erect and maintain in general.
- 2. Statutory provisions.
- 3. — In general.
- 4. — County and district fence laws.
- 5. Rights and duty to erect and maintain partition fences.
- 6. — In general.
- 7. — Statutory provisions.
- 8. — Rights acquired by prescription.
- 9. — Agreements of landowners.
- 10. — Persons liable.

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11. Division of partition fence between land-owners.
12. — In general.
13. — Appointment and proceedings of fence viewers.
14. Proceedings to compel erection of partition fence or contribution.
15. — In general.
16. — View and assessment by fence viewers.
17. Failure to erect or maintain partition fence.
18. Location.
19. Construction, material, and sufficiency.
20. Ownership.
- 20.1. — In general.
21. — Partition fences.
22. Injuries caused by fences.
23. — In general.
24. — Personal injuries.
25. — Domestic animals.
26. Removal or destruction of fences.
- 26.1. — In general.
27. — Civil liability.
28. — Criminal responsibility.
 - (.5). In general.
 - (1). Nature and elements of offense.
 - (2). Indictment or information.
 - (3). Evidence.
 - (4). Trial.
29. Fencing lands of another.

172. FERRIES

SUBJECTS INCLUDED

Establishment, maintenance, regulation and use of ferries for passage of the public over inland waters, subject to payment of tolls

Organization, franchises and powers of ferry companies

Rights, duties and liabilities of individuals or corporations exercising ferry franchises, in their capacities as carriers as well as otherwise

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations, matters applicable to in general, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Eminent domain, exercise of power of, see **EMINENT DOMAIN**

Municipalities' powers to grant and regulate ferry franchises, see **MUNICIPAL CORPORATIONS**

Obstruction of navigation, see **WATER LAW**

Taxation of ferries, see **TAXATION**

I. ESTABLISHMENT AND MAINTENANCE, ¶1-26.

II. REGULATION AND OPERATION, ¶27-35.

I. ESTABLISHMENT AND MAINTENANCE.

1. Right to establish and maintain in general.
2. What constitutes a ferry.
3. Character of ferry as highway.
4. Constitutional and statutory provisions.
5. Establishment by public authorities.
6. Ferry companies.
- 6.1. — In general.
7. — Corporate powers and liabilities.
8. — Actions.
9. Franchises and privileges.
- 9.1. — In general.
10. — Nature of franchise.
11. — Power to grant.
12. — Persons who may acquire.
13. — Prescription.
14. — Proceedings to acquire.
15. — Grant or sale or lease by public authority.
16. — Extent and exclusiveness of franchise.
17. — Right of landing and embarking.
18. — Transfer.
19. — Infringement or disturbance.
20. — Termination and renewal.
21. Location.
22. Landings and other interests in land.
23. Construction and maintenance of boats, buildings, and works.
24. Sale and transfer of ferry.

172H. FINANCE, BANKING, AND CREDIT

I. ESTABLISHMENT AND MAINTENANCE.(Cont'd)

- 25. Injuries to ferry property.
- 26. Offenses.

II. REGULATION AND OPERATION.

- 27. Power to control and regulate.
- 28. Duty to operate and transport.
- 29. Statutory and municipal regulations.
- 30. Licenses and taxes.
- 30.5. Bonds.
- 31. Tolls or fares.
- 32. Injuries incident to operation.
- 33. Actions for injuries.
- 34. Penalties for violations of regulations.
- 35. Offenses incident to operation.

172H. FINANCE, BANKING, AND CREDIT

SUBJECTS INCLUDED

Regulation and conduct of the business of finance, banking, receiving and repaying deposits and collections, lending money, extending credit, dealing in money, and collecting debts

Depository and financial institutions of all kinds, including ordinary banks of deposit, discount, and circulation, savings banks, co-operative banks, loan companies, trust companies, investment companies, savings and loan associations, building and loan associations, thrifts, credit unions, industrial banks and industrial loan companies, and "Morris Plan" banks

Organization, powers, and liabilities of such entities, and the rights and liabilities of their shareholders, members, directors, officers, employees, and agents

Rights, duties, and liabilities of bankers, banks, and similar institutions, and of those dealing with them

Clearing houses

Federal Reserve, Farm Credit, and Home Loan Bank Systems

Federal deposit insurance

Bank holding companies and the regulation thereof

Pawnbrokers and pawnshops, including their regulation and the rights, duties, and liabilities of persons engaged in such business and of those dealing with them

Credit cards, including their regulation and the rights, duties, and liabilities of issuers and holders

Regulation and conduct of the business of procuring and furnishing information as to pecuniary condition, credit, and character, as well as the rights, duties, and liabilities of those engaged therein, their agents and employees, and their subscribers or customers

Regulation of consumer finance and credit, particularly under the Truth in Lending Act, Regulation Z, the Real Estate Settlement Practices Act, the Federal Trade Commission holder and credit practices rules, the Consumer Leasing Act, the Fair Credit Billing Act, the Credit Repair Organizations Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Electronic Funds Transfer Act

Regulation of financial records and privacy, particularly under the Gramm-Leach-Bliley Act and the Right to Financial Privacy Act

Bank fraud and other offenses concerning finance, banking, and credit

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Access device theft or fraud, see FALSE PRETENSES V

Bank Secrecy Act, see CURRENCY REGULATION

Checks in hands of third persons, see BILLS AND NOTES

Commercial paper, see BILLS AND NOTES

Consumer fraud and protection statutes and regulations of general application, see ANTI-TRUST AND TRADE REGULATION III

Contracts of pledge, and the rights, duties, and obligations arising therefrom, see PLEDGES

Contracts to lend money, and the rights, duties, and obligations arising therefrom, see BILLS AND NOTES, CONTRACTS, and IMPLIED AND CONSTRUCTIVE CONTRACTS

172H. FINANCE, BANKING, AND CREDIT

Corporations or unincorporated associations in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS, ASSOCIATIONS

Counterfeiting bank notes, see COUNTERFEITING

Credit card theft or fraud, see FALSE PRETENSES V

Currency reporting and regulation, see CURRENCY REGULATION

Federal Reserve notes, see CURRENCY REGULATION

Identity theft or fraud, see FALSE PRETENSES V

Interest laws of general application, see INTEREST and USURY

Investment banking, see BROKERS, EXCHANGES, and SECURITIES REGULATION

Money and legal currency, establishment and regulation of, see CURRENCY REGULATION

Money laundering, see CURRENCY REGULATION

Negotiable instruments, see BILLS AND NOTES

Securities regulation, see SECURITIES REGULATION

Security interests created in connection with consumer loans, and the rights and obligations of parties arising therefrom, see CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST, and SECURED TRANSACTIONS

Slander or libel, liabilities for, see LIBEL AND SLANDER

Taxation of capital stock or property of banks, see TAXATION

Unfair and deceptive trade practices statutes and regulations of general application, see ANTITRUST AND TRADE REGULATION III

Usury laws of general application, see USURY

I. IN GENERAL, ¶1-30.

II. RELATION BETWEEN LENDER AND BORROWER IN GENERAL, ¶31-40.

III. CONTROL AND REGULATION IN GENERAL, ¶41-200.

III. CONTROL AND REGULATION IN GENERAL—Cont'd

(A) IN GENERAL, ¶41-50.

(B) PARTICULAR BUSINESSES AND PRACTICES, ¶51-110.

1. IN GENERAL, ¶51-70.

2. REGULATION OF INTEREST, CHARGES, AND FEES, ¶71-90.

3. DISCLOSURE REQUIREMENTS, ¶91-100.

4. DEBT COLLECTION PRACTICES, ¶101-110.

(C) ENFORCEMENT, REMEDIES, AND PROCEEDINGS, ¶111-200.

1. IN GENERAL, ¶111-130.

2. ADMINISTRATIVE AGENCIES AND PROCEEDINGS, ¶131-140.

3. ACTIONS, ¶141-150.

4. EVIDENCE, ¶151-160.

5. RELIEF, ¶161-180.

6. COSTS AND FEES, ¶181-190.

7. PENALTIES, ¶191-200.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS, ¶201-1100.

(A) IN GENERAL, ¶201-240.

(B) ORGANIZATION AND INCIDENTS OF EXISTENCE, ¶241-270.

(C) CAPITAL AND STOCK, ¶271-310.

1. IN GENERAL, ¶271-280.

2. SAVINGS AND LOANS, CREDIT UNIONS, AND RELATED ENTITIES, ¶281-310.

(D) SHAREHOLDERS AND MEMBERS, ¶311-340.

1. IN GENERAL, ¶311-330.

2. SAVINGS AND LOANS, CREDIT UNIONS, AND RELATED ENTITIES, ¶331-340.

(E) DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, ¶341-430.

1. IN GENERAL; RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, ¶341-360.

2. POWERS AND FUNCTIONS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, ¶361-380.

3. DUTIES AND LIABILITIES OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, ¶381-410.

4. LIABILITIES OF INSTITUTION FOR CONDUCT OF DIRECTORS, OFFICERS, EM-

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IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS—Cont'd

- (E) DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS—Cont'd
EMPLOYEES, AND AGENTS, ¶411-430.
- (F) FOREIGN INSTITUTIONS, ¶431-440.
- (G) POWERS, FUNCTIONS, AND DEALINGS IN GENERAL, ¶441-480.
- (H) RELATION BETWEEN INSTITUTION AND CUSTOMER IN GENERAL, ¶481-490.
- (I) DEPOSITS AND ACCOUNTS, ¶491-570.
 - 1. IN GENERAL, ¶491-530.
 - 2. JOINT ACCOUNTS, ¶531-550.
 - 3. FIDUCIARY DEPOSITORS AND CUSTODIAL ACCOUNTS, ¶551-560.
 - 4. DISCLOSURE REQUIREMENTS; TRUTH IN SAVINGS, ¶561-570.
- (J) COLLECTION AND PAYMENT OF CHECKS AND SIMILAR ITEMS, ¶571-650.
 - 1. IN GENERAL, ¶571-610.
 - 2. IMPROPER OR IRREGULAR CHECKS OR ITEMS, ¶611-630.
 - 3. RIGHTS AND LIABILITIES AS BETWEEN BANKS, ¶631-640.
 - 4. FINALITY, ¶641-650.
- (K) FUNDS TRANSFERS, ¶651-680.
- (L) FEES, CHARGES, AND SET-OFFS, ¶681-700.
- (M) LOANS AND DISCOUNTS, ¶701-760.
 - 1. IN GENERAL, ¶701-720.
 - 2. INTEREST OR RATE OF DISCOUNT, ¶721-740.
 - 3. RELATION BETWEEN INSTITUTION AND BORROWER, ¶741-760.
- (N) DEALINGS IN EXCHANGE, MONEY, SECURITIES, AND INVESTMENTS, ¶761-810.
 - 1. IN GENERAL, ¶761-780.
 - 2. ISSUE AND PAYMENT OF DRAFTS, ¶781-790.
 - 3. LETTERS OF CREDIT, ¶791-810.
- (O) ACTIONS BY OR AGAINST FINANCIAL INSTITUTIONS, ¶811-940.
 - 1. IN GENERAL, ¶811-840.
 - 2. PLEADING, ¶841-860.
 - 3. EVIDENCE, ¶861-890.
 - 4. TRIAL, ¶891-920.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS—Cont'd

- (O) ACTIONS BY OR AGAINST FINANCIAL INSTITUTIONS—Cont'd
- 5. JUDGMENT AND RELIEF, ¶921-940.
- (P) MERGER, CONSOLIDATION, AND REORGANIZATION, ¶941-960.
- (Q) FAILED OR FAILING INSTITUTIONS, WINDING UP, AND CLOSURE, ¶961-1090.
 - 1. IN GENERAL, ¶961-970.
 - 2. OFFICIAL SUPERVISION AND CONTROL IN GENERAL, ¶971-990.
 - 3. MANAGEMENT AND ADMINISTRATION OF INSTITUTION'S ASSETS AND AFFAIRS, ¶991-1010.
 - 4. CLAIMS; RIGHTS AND LIABILITIES OF CLAIMANTS AND STAKEHOLDERS, ¶1011-1040.
 - 5. ENFORCEMENT OF UNWRITTEN OR UNRECORDED AGREEMENTS; D'OENCH DUHME DOCTRINE, ¶1041-1050.
 - 6. JUDICIAL REVIEW OR INTERVENTION, ¶1051-1070.
 - 7. SUPERVISORY MERGERS, CONSOLIDATIONS, AND REORGANIZATIONS, ¶1071-1080.
 - 8. VOLUNTARY LIQUIDATION AND DISSOLUTION, ¶1081-1090.
- (R) PENALTIES AND PROCEEDINGS TO IMPOSE, ¶1091-1100.
- V. CLEARING HOUSES, ¶1101-1110.
- VI. FEDERAL RESERVE SYSTEM, ¶1111-1130.
- VII. FEDERAL FARM CREDIT SYSTEM, ¶1131-1150.
- VIII. FEDERAL HOME LOAN BANK SYSTEM, ¶1151-1160.
- IX. FEDERAL DEPOSIT INSURANCE, ¶1161-1180.
- X. BANK HOLDING COMPANIES, ¶1181-1200.
- XI. TRUST AND INVESTMENT COMPANIES, ¶1201-1220.
- XII. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES, ¶1221-1240.
- XIII. PAWNBROKERS AND PAWN SHOPS, ¶1241-1260.
- XIV. CREDIT CARDS, ¶1261-1300.
- XV. CREDIT REPORTING, ¶1301-1320.

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XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT, ☞1321-1690.

(A) IN GENERAL, ☞1321-1340.

(B) DISCLOSURE REQUIREMENTS IN GENERAL, ☞1341-1360.

(C) MORTGAGE AND RESIDENTIAL LENDING; REAL ESTATE SETTLEMENT PRACTICES, ☞1361-1390.

1. IN GENERAL, ☞1361-1380.

2. SERVICING, ☞1381-1390.

(D) LEASES AND RENTAL AGREEMENTS, ☞1391-1400.

(E) CREDIT BILLING, ☞1401-1410.

(F) CREDIT REPAIR AND COUNSELING, ☞1411-1420.

(G) CREDIT REPORTING, ☞1421-1440.

(H) CREDIT DISCRIMINATION; EQUAL CREDIT OPPORTUNITY, ☞1441-1470.

(I) DEBT COLLECTION PRACTICES, ☞1471-1500.

(J) ELECTRONIC FUNDS TRANSFERS, ☞1501-1520.

(K) ENFORCEMENT, REMEDIES, AND PROCEEDINGS, ☞1521-1690.

1. IN GENERAL, ☞1521-1550.

2. EFFECT OF VIOLATION ON ENFORCEABILITY OF TRANSACTION, ☞1551-1570.

3. ADMINISTRATIVE AGENCIES AND PROCEEDINGS, ☞1571-1580.

4. ACTIONS, ☞1581-1620.

5. EVIDENCE, ☞1621-1640.

6. MONETARY RELIEF; DAMAGES, ☞1641-1660.

7. INJUNCTIVE RELIEF, ☞1661-1680.

8. COSTS AND FEES, ☞1681-1690.

XVII. FINANCIAL RECORDS AND PRIVACY, ☞1691-1710.

(A) IN GENERAL, ☞1691-1700.

(B) ENFORCEMENT, REMEDIES, AND PROCEEDINGS, ☞1701-1710.

XVIII. OFFENSES, ☞1711-1741.

(A) IN GENERAL, ☞1711-1730.

(B) PROSECUTIONS, ☞1731-1741.

I. IN GENERAL.

1. In general.

2. What law governs.

State or federal law as rules of decision in federal court, see FEDERAL COURTS XV.

I. IN GENERAL.(Cont'd)

3. — In general.

4. — Loans, lending, and credit; interest.

5. — Letters of credit.

6. — Credit cards.

7. Relation between state and federal law; preemption.

Preemption, see also STATES I(B).

8. — In general.

9. — Banking, banks, and financial institutions in general.

10. — Directors, officers, employees, and agents.

11. — Deposits and accounts.

12. — Collection and payment of checks and similar items.

13. — Funds transfers.

14. — Fees, charges, and set-offs.

15. — Loans, lending, and credit; interest.

(1). In general.

(2). Disclosure requirements in general.

(3). Mortgage and residential lending.

16. — Dealings in exchange, money, securities, and investments.

17. — Failed or failing institutions, winding up, and closure.

18. — Credit cards.

19. — Credit reporting.

20. — Debt collection practices.

21. — Financial records and privacy.

22. — Offenses and prosecutions.

II. RELATION BETWEEN LENDER AND BORROWER IN GENERAL.

31. In general.

32. Duty of care in general; torts in general.

33. Particular duties and torts.

34. Duty of good faith and fair dealing.

35. Fiduciary duties.

36. Actions and proceedings.

III. CONTROL AND REGULATION IN GENERAL.

(A) IN GENERAL.

41. In general.

42. Lenders and loans in general.

43. Authority or license to do business in general.

172H. FINANCE, BANKING, AND CREDIT

(B) PARTICULAR BUSINESSES AND PRACTICES.

1. IN GENERAL.

51. In general.
52. Small lenders and loans in general.
53. Consumer lending and credit in general.
54. Leases, conditional sales, and installment transactions in general.
55. Motor vehicle loans and financing.
56. Mortgage and residential lending.
57. Loan origination.
58. Loan servicing.
59. Loan sharking and predatory practices in general.
60. Payday lending.
61. Check cashing and money transmission services.
62. Currency exchange.
63. Credit billing.
64. Credit repair and counseling.
65. Credit discrimination.

2. REGULATION OF INTEREST, CHARGES, AND FEES.

Generally applicable interest and usury laws, see INTEREST, USURY.

71. In general.
72. Persons and transactions subject to or protected by regulation.
73. Rate and amount of interest or finance charge.
74. — In general.
75. — Computation in general.
76. — Unearned interest or finance charge; prepayment and acceleration.
77. Incidental charges in general.
78. Origination fees, closing costs, and points.
79. Document fees.
80. Service fees and charges.
81. Late fees and default charges.
82. Collection fees and costs.
83. Insurance charges.

3. DISCLOSURE REQUIREMENTS.

91. In general.
92. Leases, conditional sales, and installment transactions in general.
93. Motor vehicle loans and financing.
94. Mortgage and residential lending.

4. DEBT COLLECTION PRACTICES.

101. In general.
102. Persons and transactions subject to or protected by regulation.
103. Practices prohibited or required in general.
104. Communications, representations, and notices; debtor's response.
105. Litigation conduct.
106. Offers to settle or compromise.
107. Harassment and abuse.
108. Licensing and registration of debt collectors.

(C) ENFORCEMENT, REMEDIES, AND PROCEEDINGS.

1. IN GENERAL.

111. In general.
112. Effect of violation of regulations or lack of license in general.
113. Enforceability of transactions and liabilities incurred; rescission and cancellation.
114. — In general.
115. — Violations of licensing requirements.
116. — Violations of regulations concerning interest, charges, and fees.
117. — Violations of disclosure requirements.
118. — Assertion of violation as defense to suit on underlying obligation; recoupment and set-off.
119. Defenses and safe harbors in general.
120. Knowledge and intent; bona fide errors; good-faith defense.
121. Persons liable.
122. Exclusive and concurrent remedies or laws; conditions precedent; exhaustion.
123. Waiver of rights or remedies.

2. ADMINISTRATIVE AGENCIES AND PROCEEDINGS.

131. In general.
132. Officers and employees.
133. Jurisdiction and authority.
134. Investigations and examinations.
135. Rules and regulations.
136. Hearings, adjudications, and orders.

172H. FINANCE, BANKING, AND CREDIT

III. CONTROL AND REGULATION IN GENERAL.(Cont'd)

- 137. Administrative review of administrative action.
- 138. Judicial review and enforcement.
- 139. Administrative construction of statutes and regulations; judicial deference.
See also ADMINISTRATIVE LAW AND PROCEDURE §438(20).

3. ACTIONS.

- 141. In general.
- 142. Right of action.
- 143. Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 144. Parties; standing.
- 145. Pleading.
- 146. Trial and judgment.

4. EVIDENCE.

- 151. In general; admissibility.
- 152. Presumptions, inferences, and burden of proof.
- 153. Weight and sufficiency.

5. RELIEF.

- 161. In general.
- 162. Monetary relief; damages.
- 163. — In general.
- 164. — Refunds.
- 165. — Enhanced damages; double or treble damages.
- 166. — Punitive or exemplary damages.
- 167. Injunctive relief.
- 168. — In general.
- 169. — Preliminary injunctive relief.
- 170. Proceedings to impose; evidence.

6. COSTS AND FEES.

- 181. In general.
- 182. Proceedings to impose; evidence.

7. PENALTIES.

- 191. In general.
- 192. Proceedings to impose; evidence.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.

(A) IN GENERAL.

- 201. In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 202. Banks and banking in general.
- 203. Control and regulation in general.
- 204. — In general.
- 205. — Federal control and regulation in general.
- 206. — Authority or license to do business in general.
- 207. Particular entities and businesses.
- 208. — In general.
- 209. — State banks.
- 210. — National banks.
- 211. — Savings banks.
- 212. — Private banks.
- 213. — Savings and loans and related entities.
- 214. — Credit unions.
- 215. Unauthorized or unlicensed banking.
Criminal offenses, see §1723.
- 216. — In general.
- 217. — Validity of transactions and liabilities incurred.
- 218. License fees and taxes.
- 219. Capital requirements and limitations on indebtedness.
- 220. Reserves, guaranty funds, and deposits of securities.
- 221. Reports and statements.
- 222. Administrative agencies and proceedings.
Branch banking, see §256.
- 223. — In general.
- 224. — Officers and employees.
- 225. — Jurisdiction and authority.
- 226. — Investigations and examinations.
- 227. — Rules and regulations.
- 228. — Hearings, adjudications, and orders.
- 229. — Administrative review of administrative action.
- 230. — Judicial review and enforcement.
- 231. — Administrative construction of statutes and regulations; judicial deference.
See also ADMINISTRATIVE LAW AND PROCEDURE §438(20).

(B) ORGANIZATION AND INCIDENTS OF EXISTENCE.

- 241. In general.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 242. Corporations and incorporation in general.
- 243. Associations and other unincorporated organizations in general.
- 244. Partnerships and joint ventures in general.
- 245. Constitution, by-laws, and rules.
- 246. — In general.
- 247. — Amendment or repeal.
- 248. Charters and legislative acts.
- 249. — In general.
- 250. — Special charters or acts.
- 251. Defective incorporation or organization.
- 252. Term of existence.
- 253. Extension or renewal.
- 254. Name and seal.
- 255. Location and place of business; relocation.
- 256. Branches.
- 257. — In general.
- 258. — Application and proceedings.
- 259. — Judicial review.
- 260. Parent-subsidiary relationships.
Bank holding companies, see X.
- 261. — In general.
- 262. — Divisions.
- 263. Disregarding corporate entity; piercing corporate veil.
See also CORPORATIONS AND BUSINESS ORGANIZATIONS II.
- 264. Evidence of existence.

(C) CAPITAL AND STOCK.

1. IN GENERAL.

- 271. In general.
- 272. Amount of capital and shares.
- 273. Increase of capital stock.
- 274. Reduction of capital stock.
- 275. — In general.
- 276. — Reverse stock split.
- 277. Subscription to and issue of stock.
- 278. Transfer of stock.
- 279. Profits and dividends.
- 280. Lien of entity on stock or dividends.

2. SAVINGS AND LOANS, CREDIT UNIONS, AND RELATED ENTITIES.

- 281. In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 282. Amount of capital and shares.
- 283. Subscription to and issue of stock.
- 284. — In general.
- 285. — Fraud and misrepresentation.
- 286. Paid-up stock.
- 287. Transfer of shares.
- 288. Dividends.
- 289. Maturity of shares.
- 290. — In general.
- 291. — Power to contract as to time and amount.
- 292. — Effect of by-laws, stock certificates, and contracts in general.
- 293. — Effect of statements or representations in circulars or prospectus.
- 294. Release or surrender of shares.
- 295. Withdrawal of member and redemption of shares.
- 296. — In general.
- 297. — Conditions precedent in general.
- 298. — Existence and amount of redemption fund.
- 299. — Notice.
- 300. — Preferences.
- 301. — Amount to be recovered or paid in general.
- 302. — Allowance of profits or dividends.
- 303. — Deduction of expenses and losses.
- 304. Lien of entity on stock or dividends.

(D) SHAREHOLDERS AND MEMBERS.

1. IN GENERAL.

- 311. In general.
- 312. Rights, duties, and liabilities as to institution.
- 313. — In general.
- 314. — Meetings.
- 315. — Right to receive fair value.
Shareholder rights and responsibilities as to merger, consolidation, and reorganization, see 942.
- 316. — Preemptive rights.
- 317. Liability for debts and acts of institution.
- 318. — In general.
- 319. — When liability accrues, and conditions precedent.
- 320. — Release and discharge.
- 321. — Effect of transfer of stock.
- (1). In general.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- (2). Liability of transferor.
- (3). Liability of transferee.
- 322. Actions and proceedings by or against shareholders or members.
- 323. — In general.
- 324. — Suing or defending on behalf of bank; derivative actions.
 - (1). In general.
 - (2). Pleading requirements.

2. SAVINGS AND LOANS, CREDIT UNIONS, AND RELATED ENTITIES.

- 331. In general.
- 332. Rights, duties, and liabilities.
- 333. — In general.
- 334. — Meetings.
- 335. Death of shareholder or member.
- 336. Dues, fines, and assessments.
- 337. Actions and proceedings by or against shareholders or members.

(E) DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.

1. IN GENERAL; RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.

- 341. In general.
- 342. Hiring and tenure in general.
- 343. — In general.
- 344. — Election or appointment.
- 345. Discharge or removal.
- 346. Retaliation; whistleblowing.
- 347. Compensation and indemnity.
- 348. Employment contracts.
- 349. Actions by directors, officers, employees, and agents.
- 350. — In general.
- 351. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 352. — Parties; standing.
- 353. — Pleading.
- 354. — Evidence.
- 355. — Trial and judgment.

2. POWERS AND FUNCTIONS OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.

- 361. In general.
- 362. Meetings of directors.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 363. Particular powers and functions.
- 364. — In general.
- 365. — Property transactions.
- 366. — Contracts.
- 367. — Deposits and collections.
- 368. — Loans and discounts.
- 369. — Bills, notes, and securities.
- 370. — Conduct of litigation.

3. DUTIES AND LIABILITIES OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.

- 381. In general.
- 382. Duties and liabilities as to institution and shareholders in general.
- 383. Negligence.
- 384. — In general.
- 385. — Gross negligence.
- 386. Fiduciary duties.
- 387. Conflicts of interest and self-dealing.
- 388. Duties and liabilities as to third parties.
- 389. — In general.
- 390. — Negligence.
- 391. — Fiduciary duties.
- 392. Liabilities for conduct of fellow directors, officers, employees, and agents.
- 393. Actions against directors, officers, employees, and agents.
- 394. — In general; nature and form.
- 395. — Conditions precedent and defenses.
- 396. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 397. — Parties; standing.
- 398. — Pleading.
- 399. — Evidence.
- 400. — Trial and judgment.

4. LIABILITIES OF INSTITUTION FOR CONDUCT OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS.

Actions against institution, see IV(O).

- 411. In general.
- 412. Principles of agency, vicarious liability, and respondeat superior in general.
- 413. Scope of employment or authority in general.
- 414. — In general.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 415. — Actual or express authority.
- 416. — Apparent or implied authority.
- 417. Particular conduct.
- 418. — In general.
- 419. — Representations or admissions in general.
- 420. — Negligence.
- 421. — Wrongful or intentional acts; misconduct and malfeasance.
 - (1). In general.
 - (2). Loans and discounts.
- 422. — Fraud and misrepresentation.
 - (1). In general.
 - (2). Loans and discounts.
- 423. Estoppel to deny authority.
- 424. Ratification and repudiation.
- 425. Notice to or knowledge of individual; imputation to institution.
- 426. — In general.
- 427. — Particular cases.
- 428. Effect of individual's conflict of interest.
- 429. Negligent hiring, retention, training, or supervision.
- 430. Evidence as to authority.

(F) FOREIGN INSTITUTIONS.

- 431. In general.
- 432. Savings and loans, credit unions, and related entities.
- 433. Actions by or against.
Personal jurisdiction over nonresidents, or "long-arm" jurisdiction, see COURTS ¶13.1, FEDERAL COURTS X.

(G) POWERS, FUNCTIONS, AND DEALINGS IN GENERAL.

- 441. In general.
- 442. Particular institutions.
- 443. — In general.
- 444. — State banks in general.
- 445. — National banks in general.
- 446. — Savings banks.
- 447. — Private banks.
- 448. — Savings and loans and related entities.
- 449. — Credit unions.
- 450. Construction of charters and laws.
- 451. Rules of institution.
- 452. Customs and usages.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 453. Agency of institution.
- 454. Acquiring or holding stock.
Dealing in stock, see ¶769. Bank holding companies, see X.
- 455. — In general.
- 456. — Institution's own stock.
- 457. Property and conveyances.
- 458. — In general.
- 459. — Real property.
- 460. Contracts in general.
Loan contracts, see BILLS AND NOTES, CONTRACTS, and IMPLIED AND CONSTRUCTIVE CONTRACTS. Credit card contracts, see ¶1269.
- 461. Interest rate swaps.
- 462. Currency handling services.
- 463. Borrowing money.
- 464. — In general.
- 465. — Bonds and debentures.
- 466. Guaranty, suretyship, and indemnity.
- 467. Insurance.
- 468. Torts in general.
- 469. — In general.
- 470. — Duties owed by institutions in general.
- 471. — Negligence in general.
- 472. — Personal injury.
- 473. Effect of acts ultra vires.

(H) RELATION BETWEEN INSTITUTION AND CUSTOMER IN GENERAL.

- 481. In general.
- 482. Duty of care in general; torts in general.
- 483. Duty of good faith and fair dealing.
- 484. Fiduciary duties.

(I) DEPOSITS AND ACCOUNTS.

1. IN GENERAL.

- 491. In general.
- 492. Relation between institution and depositor or account holder in general.
- 493. — In general.
- 494. — Contractual nature in general.
- 495. — Duty of care in general; torts in general.
- 496. — Duty of good faith and fair dealing.
- 497. — Fiduciary duties.
- 498. — Passbooks and statements of account.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 499. Power and duty to receive deposits.
- 500. Making, receipt, and entry of deposits.
- 501. Title to and disposition of deposits and accounts.
- 502. — In general.
- 503. — Payable-on-death (POD) accounts.
- 504. — Funds of person other than depositor.
- 505. — Conversion.
- 506. Deposits other than money.
- 507. — In general.
- 508. — Checks and drafts on depositor's institution.
- 509. General and special deposits and accounts.
- 510. — In general.
- 511. — Individual retirement accounts.
- 512. Demand deposits.
- 513. — In general.
- 514. — Checking accounts.
- 515. Time or fixed-term deposits.
- 516. — In general.
- 517. — Certificates of deposit.
- 518. Interest on deposits.
- 519. — In general.
- 520. — Demand deposits; checking accounts.
- 521. — Time or fixed-term deposits; certificates of deposit.
- 522. Repayment or return of deposits; withdrawals and disbursements.
- 523. — In general.
- 524. — Mode and time of seeking.
- 525. — Wrongful payments and unauthorized withdrawals.
- 526. Electronic transactions in general.

Wholesale funds transfers, particularly as governed by Article 4A of the Uniform Commercial Code, see IV(K). Fees and charges, see IV(L). Electronic Fund Transfers Act, see XVI(J).

2. JOINT ACCOUNTS.

- 531. In general.
- 532. Nature and incidents in general.
- 533. Creation and existence.
- 534. — In general.
- 535. — Presumptions as to joint accounts.
- 536. Severance.
- 537. Termination.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 538. Survivorship.
- 539. Mutual rights, duties, and liabilities of joint account holders.
- 540. — In general.
- 541. — Conversion.
- 542. — Actions between joint account holders.
- 543. Rights and liabilities of joint account holders as to third persons.
- 544. — In general.
- 545. — Duties as to third persons.
 - (1). In general.
 - (2). Particular cases.
- 546. — Actions by or against joint account holders.

3. FIDUCIARY DEPOSITORS AND CUSTODIAL ACCOUNTS.

- 551. In general.
- 552. Trustees; trust funds and accounts.
- 553. Attorneys; client funds and accounts.
- 554. Public funds and accounts.

4. DISCLOSURE REQUIREMENTS; TRUTH IN SAVINGS.

- 561. In general.
- 562. Enforcement, remedies, and proceedings.

(J) COLLECTION AND PAYMENT OF CHECKS AND SIMILAR ITEMS.

Checks and drafts on depositor's institution, see 508.

1. IN GENERAL.

- 571. In general.
- 572. Parties involved and their rights, duties, and liabilities in general.
- 573. — In general.
- 574. — Depositary, intermediary, collecting, and presenting banks.
 - (1). In general.
 - (2). Relation to depositor for collection.
 - (3). Title and rights to deposited check or item.
- 575. — Payor/drawee banks.
- 576. — Drawer of check or item.
- 577. — Payee or holder of check or item.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 578. Making, receipt, and entry of deposit for collection.
- 579. Title to items received for collection.
- 580. Authority and acts in making collection.
- 581. — In general.
- 582. — Power and duty to make collection.
- 583. — What constitutes collection.
- 584. — Effect of customs and usages.
- 585. — Taking things other than money in payment.
- 586. — Rights and liabilities as to proceeds.
 - (1). In general.
 - (2). Insolvency of collecting or other intermediary bank.
 - (3). Insolvency of depository bank.
- 587. — Payment of proceeds.
- 588. — Failure to collect.
- 589. — Failure to fix liability of indorser or drawer.
- 590. Acceptance, payment, and settlement of check or item.
Finality, provisional credits, and charge-backs, see IV(I)4.
- 591. — In general.
- 592. — Time for acceptance, payment, or settlement.
- 593. Drawer's notice not to pay or revocation of check or item; stop-payment orders.
- 594. Bank's refusal to pay; wrongful dishonor.
- 595. Estoppel of bank to resist liability.
- 596. Order of payment and priority between checks.
- 597. Mode and sufficiency of payment.
- 598. Rights of bank making payment.
- 599. — In general.
- 600. — Subrogation.
- 601. Effect of insufficient deposits; overdrafts and check-kiting.
Fees and charges, see ¶686. Inter-bank rights and liabilities, see IV(I)3.
- 602. Notes payable at bank.
- 603. Certified checks or notes.
- 604. Documentary drafts.
- 605. Lost or stolen items.

2. IMPROPER OR IRREGULAR CHECKS OR ITEMS.

- 611. In general.
- 612. Signatures and authorizations in general.
- 613. — In general.
- 614. — Drawer's signature or authorization.
- 615. Indorsement in general.
- 616. — In general.
- 617. — Missing indorsement.
- 618. — Unauthorized indorsement.
- 619. Malfeasance; forgery, alteration, and fraud.
- 620. — In general.
- 621. — Liability of bank to drawer in general.
- 622. — Signatures, authorizations, and indorsements.
- 623. Duties and negligence of drawer.
- 624. — In general.
- 625. — Ratification by drawer.
- 626. — Laches of drawer.
- 627. Right of bank to recover money paid.
- 628. — In general.
- 629. — Recovery from bona fide holder.

3. RIGHTS AND LIABILITIES AS BETWEEN BANKS.

- 631. In general.
- 632. Check-kiting schemes.
- 633. Lost or stolen items.
- 634. Improper or irregular checks or items.
- 635. — In general.
- 636. — Malfeasance; forgery, alteration, and fraud.
- 637. Warranties.

4. FINALITY.

- 641. In general.
- 642. Provisional credits and charge-backs.

(K) FUNDS TRANSFERS.

See also ¶526. Electronic Fund Transfers Act, see XVI(I).

- 651. In general.
- 652. Parties to transfers.
- 653. Payment and transfer orders.
- 654. — In general.
- 655. — Requisites and sufficiency.
- 656. — Erroneous orders.
- 657. — Acceptance or rejection.
 - (1). In general.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- (2). Liability and duty of receiving bank regarding unaccepted payment order.
- 658. — Cancellation or amendment.
- 659. Obligations of receiving bank in execution of payment order.
- 660. — In general.
- 661. — Sender's instructions.
- 662. — Errors in executing payment order.
 - (1). In general.
 - (2). Sender's responsibility to discover or report.
- 663. — Interest.
- 664. Payment of order.
- 665. — In general.
- 666. — Order of payment from account.
- 667. — Objections to payment.
 - (1). In general.
 - (2). Time for notice or objection.
- 668. — Payment to beneficiary.
- 669. Title to funds.
- 670. Authorization and verification.
- 671. — In general.
- 672. — Unauthorized orders; effect of fraud or other misconduct.
- 673. — Refund of payment.

(L) FEES, CHARGES, AND SET-OFFS.

Provisional credits and charge-backs, see ¶642. Loan-related fees and charges, see IV(M). Fees for dealings in exchange, money, securities, and investments, see IV(N).

- 681. In general.
- 682. Withdrawal fees.
- 683. Checking fees.
- 684. — In general.
- 685. — Check-cashing fees.
- 686. Overdraft fees.
- 687. Automated teller machine (ATM) fees.
- 688. Application of deposits to debts due institution; set-off by institution.
- 689. — In general.
- 690. — Debts not matured.
- 691. — Deposits made for special purpose.
- 692. — Deposits involving rights or claims of multiple parties.
 - (1). In general.
 - (2). Principal and agent; fiduciaries.
 - (3). Trustees.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- (4). Indorsers, guarantors, and sureties.
- 693. — Deposits of improper or irregular checks or items.
- 694. — Deposits fraudulently obtained by depositor.
- 695. — Application after assignment of deposit.
- 696. Setting off drawer's debts against payee/holder.
- 697. Set-off by depositor.
- 698. Lien of institution on deposits.

(M) LOANS AND DISCOUNTS.

Loan contracts, see BILLS AND NOTES, CONTRACTS, and IMPLIED AND CONSTRUCTIVE CONTRACTS. Credit cards, see XIV.

1. IN GENERAL.

- 701. In general.
- 702. Requisites and validity of loan or discount in general.
- 703. Premiums.
- 704. Payment and satisfaction.
- 705. Secured lending; mortgages.

See also CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST, PLEDGES, and SECURED TRANSACTIONS.
- 706. — In general.
- 707. — Savings and loans, credit unions, and related entities in general.
- 708. — Foreclosure and sale.
- 709. Loans to insiders.
- 710. — In general.
- 711. — Shareholders; stock as security.
- 712. — Directors, officers, employees, and agents.
- 713. Discount of forged or fraudulent paper.

2. INTEREST OR RATE OF DISCOUNT.

Generally applicable interest and usury laws, see INTEREST, USURY.

- 721. In general.
- 722. What is interest.
- 723. Institutions regulated.
- 724. — In general.
- 725. — National banks.
- 726. — Savings and loans, credit unions, and related entities.
- 727. — Federally insured institutions.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 728. Charges and transactions regulated.
- 729. — In general.
- 730. — Discounts.
- 731. Permissible rate.
- 732. Operation and effect of impermissible charges and transactions; remedies.

3. RELATION BETWEEN INSTITUTION AND BORROWER.

- 741. In general.
- 742. Duty of care in general; torts in general.
- 743. Particular duties and torts.
- 744. — In general.
- 745. — Conversion and civil theft.
- 746. — Fraud and misrepresentation.
- 747. Duty of good faith and fair dealing.
- 748. — In general.
- 749. — Particular cases.
- 750. Fiduciary duties.
- 751. — In general.
- 752. — Particular cases.

(N) DEALINGS IN EXCHANGE, MONEY, SECURITIES, AND INVESTMENTS.

1. IN GENERAL.

- 761. In general.
- 762. Commercial paper, negotiable instruments, and bills and notes in general.
See also **BILLS AND NOTES**.
- 763. Exchange in general.
- 764. Bills of exchange.
- 765. Money.
- 766. — In general.
- 767. — Gold and silver; bullion.
- 768. Foreign currency and exchange.
- 769. Stock or securities; investments.
Acquiring or holding stock, see §454. *Bank holding companies, see* X. *Investment banking and securities regulation, see* **BROKERS, EXCHANGES, and SECURITIES REGULATION**.
- 770. Loans by institution for others.
- 771. Circulating notes.
See also **CURRENCY REGULATION**.

2. ISSUE AND PAYMENT OF DRAFTS.

- 781. In general.
- 782. Cashier's checks; official bank checks.
- 783. Money orders.
- 784. Teller's checks.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 785. Traveler's checks.
- 786. Countermanding payment; stop-payment orders.
- 787. Payment of forged or altered paper.

3. LETTERS OF CREDIT.

- 791. In general.
- 792. Commercial or documentary letter of credit.
- 793. Standby letter of credit.
- 794. Assignment or transfer of letter of credit or of proceeds.
- 795. Customs and usages.
- 796. Term and renewal.
- 797. Justification for dishonor.
- 798. — In general.
- 799. — Relation to underlying transaction; independence principle.
- 800. — Notice of dishonor.
- 801. Compliance with terms; documents and drafts.
- 802. — In general.
- 803. — Warranty.
- 804. Conversion, civil theft, and other claims based in tort.
- 805. Waiver by or estoppel against issuer.

(O) ACTIONS BY OR AGAINST FINANCIAL INSTITUTIONS.

See also §322, 337, 349, 393, 433, 542, 546, 950, 1052.

1. IN GENERAL.

- 811. In general.
- 812. Capacity to sue and be sued.
- 813. — In general.
- 814. — National banks.
- 815. — Savings and loans, credit unions, and related entities.
- 816. — Federally insured institutions.
- 817. Nature and form of remedy.
Summary remedies, see **JUDGMENT V**.
- 818. Right of action and defenses.
- 819. Persons entitled to sue; standing.
- 820. — In general.
- 821. — Collection and payment of checks and similar items.
- 822. Conditions precedent.
- 823. Jurisdiction and venue.
Personal jurisdiction over nonresidents, or "long-arm" jurisdiction, see **COURTS** §13.1, **FEDERAL COURTS** X.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

824. Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
825. — In general.
826. — Contracts in general.
827. — Torts in general.
828. — Deposits and accounts.
829. — Collection and payment of checks and similar items.
830. — Funds transfers.
831. — Fees, charges, and set-offs.
832. — Loans and discounts.
 (1). In general.
 (2). Interest or rate of discount.
 (3). Torts.
833. — Dealings in exchange, money, securities, and investments.
 (1). In general.
 (2). Letters of credit.
834. Parties.
835. — In general.
836. — Use of name of bank or officer.
837. Process and appearance.

2. PLEADING.

841. In general.
842. Contracts in general.
843. Torts in general.
844. Deposits and accounts.
845. Collection and payment of checks and similar items.
846. Funds transfers.
847. Fees, charges, and set-offs.
848. Loans and discounts.
849. — In general.
850. — Interest or rate of discount.
851. — Torts.
852. Dealings in exchange, money, securities, and investments.
853. — In general.
854. — Letters of credit.

3. EVIDENCE.

Evidence of corporate or other organizational existence, see §264.

861. In general.
862. Presumptions, inferences, and burden of proof.
863. — In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

864. — Contracts in general.
865. — Torts in general.
866. — Deposits and accounts.
867. — Collection and payment of checks and similar items.
868. — Funds transfers.
869. — Fees, charges, and set-offs.
870. — Loans and discounts.
 (1). In general.
 (2). Interest or rate of discount.
 (3). Torts.
871. — Dealings in exchange, money, securities, and investments.
 (1). In general.
 (2). Letters of credit.
872. Admissibility.
873. Degree of proof.
874. Weight and sufficiency.
875. — In general.
876. — Contracts in general.
877. — Torts in general.
878. — Deposits and accounts.
879. — Collection and payment of checks and similar items.
880. — Funds transfers.
881. — Fees, charges, and set-offs.
882. — Loans and discounts.
 (1). In general.
 (2). Interest or rate of discount.
 (3). Torts.
883. — Dealings in exchange, money, securities, and investments.
 (1). In general.
 (2). Letters of credit.

4. TRIAL.

891. In general.
892. Questions of law or fact.
893. — In general.
894. — Contracts in general.
895. — Torts in general.
896. — Deposits and accounts.
897. — Collection and payment of checks and similar items.
898. — Funds transfers.
899. — Fees, charges, and set-offs.
900. — Loans and discounts.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- (1). In general.
- (2). Interest or rate of discount.
- (3). Torts.
- 901. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.
- 902. Instructions.
- 903. — In general.
- 904. — Contracts in general.
- 905. — Torts in general.
- 906. — Deposits and accounts.
- 907. — Collection and payment of checks and similar items.
- 908. — Funds transfers.
- 909. — Fees, charges, and set-offs.
- 910. — Loans and discounts.
 - (1). In general.
 - (2). Interest or rate of discount.
 - (3). Torts.
- 911. — Dealings in exchange, money, securities, and investments.
 - (1). In general.
 - (2). Letters of credit.

5. JUDGMENT AND RELIEF.

- 921. In general.
- 922. Damages.
- 923. — In general.
- 924. — Collection and payment of checks and similar items.
- 925. — Letters of credit.
- 926. — Torts.
- 927. Punitive or exemplary damages.
- 928. Injunction.
- 929. — In general.
- 930. — Letters of credit.
- 931. Preliminary injunction.
- 932. — In general.
- 933. — Letters of credit.
- 934. Costs and fees.

(P) MERGER, CONSOLIDATION, AND REORGANIZATION.

Failed or failing institutions, see IV(Q)7.

- 941. In general.
- 942. Shareholder rights and responsibilities.
- 943. — In general.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 944. — Dissenting shareholders; appraisal.
- 945. Approval or disapproval, and proceedings therefor.
- 946. Operation and effect.
- 947. State-to-national or national-to-state reorganization.
- 948. — In general.
- 949. — Operation and effect.
- 950. Actions by or against surviving entity.

(Q) FAILED OR FAILING INSTITUTIONS, WINDING UP, AND CLOSURE.

1. IN GENERAL.

- 961. In general.
- 962. Dissolution or forfeiture of franchise in general.
Voluntary dissolution or liquidation, see IV(Q)8.
- 963. Insolvency and its effect in general.
- 964. — In general.
- 965. — Transfers and preferences affected by insolvency.
- 966. — Rights of persons making deposits after insolvency.
- 967. — Civil liability on insolvency.
- 968. Remedies and proceedings in general.
- 969. Assignments for benefit of creditors.

2. OFFICIAL SUPERVISION AND CONTROL IN GENERAL.

- 971. In general.
- 972. Liquidation.
- 973. Conservatorship.
- 974. Receivership.
- 975. — In general.
- 976. — Appointment and removal of receivers.
- 977. — Compensation of receivers.
- 978. — Operation and effect of receivership.
- 979. Federal supervision and control.
- 980. — In general.
- 981. — Conservatorship or receivership.
- 982. — State institutions.

3. MANAGEMENT AND ADMINISTRATION OF INSTITUTION'S ASSETS AND AFFAIRS.

- 991. In general.
- 992. Collection and protection of assets.

172H. FINANCE, BANKING, AND CREDIT

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 993. Sale or other disposition of assets.
- 994. Contracts and leases.
- 995. — In general.
- 996. — Repudiation.
- 997. Collection, settlement, or adjustment of loans.
- 998. Tort claims.
- 999. Fraudulent or preferential transfers.
- 1000. Establishment of new or "bridge" depository institution.

4. CLAIMS; RIGHTS AND LIABILITIES OF CLAIMANTS AND STAKEHOLDERS.

- 1011. In general.
- 1012. Claims provable; estoppel to claim.
- 1013. Presentation and proof of claims.
- 1014. — In general.
- 1015. — Time for presentation and proof.
- 1016. Determination of claims; allowance or disallowance.
- 1017. — In general.
- 1018. — Time for determination.
- 1019. Payment, distributions, and priorities in general.
- 1020. Deposits and depositors.
- 1021. — In general.
- 1022. — Special or segregated deposits.
- 1023. — Deposits of trust funds.
- 1024. Holders of checks, drafts, or circulating notes.
- 1025. Shareholders and members.
- 1026. — In general.
- 1027. — Savings and loans, credit unions, and related entities.
- 1028. Dividends.
- 1029. Fees and expenses.
- 1030. Administrative review of claims.

5. ENFORCEMENT OF UNWRITTEN OR UNRECORDED AGREEMENTS; D'OENCH DUHME DOCTRINE.

- 1041. In general.
- 1042. Particular cases.

6. JUDICIAL REVIEW OR INTERVENTION.

- 1051. In general.
- 1052. Actions by or against institutions and their receivers, conservators, or liquidators.

IV. BANKS AND SIMILAR FINANCIAL INSTITUTIONS.(Cont'd)

- 1053. — In general.
- 1054. — National banks.
- 1055. — Savings and loans, credit unions, and related entities.
- 1056. Conditions precedent and defenses in general.
- 1057. Immunity.
- 1058. Time for proceedings; limitations and laches.
- 1059. Exhaustion of other remedies.
- 1060. Pleading.
- 1061. Evidence.
- 1062. Trial and judgment.

7. SUPERVISORY MERGERS, CONSOLIDATIONS, AND REORGANIZATIONS.

- 1071. In general.
- 1072. Contracts and agreements; Winstar claims.
- 1073. — In general.
- 1074. — Damages and restitution.

8. VOLUNTARY LIQUIDATION AND DISSOLUTION.

- 1081. In general.
- 1082. National banks.
- 1083. Savings and loans, credit unions, and related entities.
- 1084. Shareholder rights and responsibilities.
- 1085. Proceedings.

(R) PENALTIES AND PROCEEDINGS TO IMPOSE.

- 1091. In general.
- 1092. Unauthorized banking.
- 1093. Excessive interest.

V. CLEARING HOUSES.

- 1101. In general; nature and status.
- 1102. Constitution, by-laws, and rules.
- 1103. Settlements and transactions through clearing house.
- 1104. Rights and liabilities of banks not members.
- 1105. Security for payment of balances.
- 1106. Actions.

VI. FEDERAL RESERVE SYSTEM.

Federal Reserve notes, see CURRENCY REGULATION ¶3.

172H. FINANCE, BANKING, AND CREDIT

VI. FEDERAL RESERVE SYSTEM.(Cont'd)

- 1111. In general.
- 1112. Federal Reserve Board.
- 1113. — In general.
- 1114. — Officers and employees.
- 1115. Federal Reserve Banks.
- 1116. — In general.
- 1117. — Deposits, exchange, and collection.
- 1118. — Loans and discounts.
- 1119. — Actions.
- 1120. Member banks.

Bank holding companies, see X.

VII. FEDERAL FARM CREDIT SYSTEM.

See also AGRICULTURE ¶3.5.

- 1131. In general.
- 1132. Government agencies and instrumentalities in general.
- 1133. Farm credit banks.
- 1134. — In general.
- 1135. — Joint stock land banks.
- 1136. Farm loan associations and cooperative organizations.
- 1137. Loans and mortgages.
- 1138. — In general.
- 1139. — Foreclosure.
- 1140. Judicial review or intervention; actions.
- 1141. Insolvency and dissolution.

VIII. FEDERAL HOME LOAN BANK SYSTEM.

- 1151. In general.
- 1152. Government agencies and instrumentalities in general.
- 1153. Federal home loan banks.
- 1154. — In general.
- 1155. — Officers and employees.
- 1156. Judicial review or intervention; actions.

IX. FEDERAL DEPOSIT INSURANCE.

- 1161. In general.
- 1162. Institutions insured and subject to regulation.
- 1163. Assessments and premiums.
- 1164. Government agencies and instrumentalities.
- 1165. — In general; nature and status.
- 1166. — Officers and employees.
- 1167. — Powers, functions, and dealings in general.

IX. FEDERAL DEPOSIT INSURANCE.(Cont'd)

- 1168. — Subrogation rights.
- 1169. — Proceedings before agency or instrumentality.
- 1170. Regulation of institution-affiliated parties.
- 1171. — In general.
- 1172. — Suspension, removal, prohibition, and other penalties.
- 1173. — Golden parachutes and indemnification payments.
- 1174. Judicial review or intervention; actions.

X. BANK HOLDING COMPANIES.

- 1181. In general; nature and status.
- 1182. Federal regulation.
- 1183. — In general.
- 1184. — Federal Reserve Board approval and regulation in general.
- 1185. — Permitted activities; non-banking business.
 - (1). In general.
 - (2). Antitrust and tying.
- 1186. — Administrative proceedings.
 - (1). In general.
 - (2). Hearing, findings, and determination.
 - (3). Judicial review or intervention.
- 1187. — Actions.
- 1188. — Penalties; treble damages.
- 1189. State regulation.
- 1190. — In general.
- 1191. — Administrative agencies and proceedings.
- 1192. — Actions.

XI. TRUST AND INVESTMENT COMPANIES.

Investment banking, see BROKERS and EXCHANGES. Securities regulation, see SECURITIES REGULATION.

- 1201. In general.
- 1202. Control and regulation in general.
- 1203. — In general.
- 1204. — Administrative agencies and proceedings.
- 1205. Organization and incidents of existence.
- 1206. Capital and stock.
- 1207. Shareholders and members.
- 1208. Directors, officers, employees, and agents.

172H. FINANCE, BANKING, AND CREDIT

XI. TRUST AND INVESTMENT COMPANIES.(Cont'd)

- 1209. — In general.
- 1210. — Liabilities of company for conduct of directors, officers, employees, and agents.
- 1211. Powers, functions, and dealings.
- 1212. — In general.
- 1213. — Deposits and accounts.
- 1214. — Loans and discounts.
- 1215. Mergers, acquisitions, and reorganizations.
- 1216. Insolvency and dissolution.

XII. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

- 1221. In general.
- 1222. Control and regulation in general.
- 1223. — In general.
- 1224. — Authority or license to do business.
- 1225. — Administrative agencies and proceedings.
- 1226. Loans, interest, and charges.
- 1227. Effect of violation of regulations or lack of license.
- 1228. Actions.
- 1229. — In general.
- 1230. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1231. — Parties; standing.
- 1232. — Pleading.
- 1233. — Evidence.
- 1234. — Trial.
- 1235. — Judgment and relief.
- 1236. — Costs and fees.
- 1237. Insolvency and dissolution.

XIII. PAWNBROKERS AND PAWNSHOPS.

- 1241. In general.
- 1242. Control and regulation in general.
- 1243. — In general.
- 1244. — Authority or license to do business.
- 1245. — Administrative agencies and proceedings.
- 1246. Loans, interest, and charges.
- 1247. Rights and liabilities as to goods pawned.

XIII. PAWNBROKERS AND PAWNSHOPS.(Cont'd)

- 1248. Effect of violation of regulations or lack of license.
- 1249. Actions.
- 1250. — In general.
- 1251. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1252. — Parties; standing.
- 1253. — Pleading.
- 1254. — Evidence.
- 1255. — Trial.
- 1256. — Judgment and relief.
- 1257. — Costs and fees.
- 1258. Penalties.

XIV. CREDIT CARDS.

Credit card theft or fraud, see FALSE PRETENSES

V.

- 1261. In general.
- 1262. Control and regulation in general.
- 1263. — In general.
- 1264. — Authority or license to do business.
- 1265. — Administrative agencies and proceedings.
- 1266. Interest, charges, and fees.
- 1267. Disclosure requirements.
- 1268. Credit discrimination.
- 1269. Contracts.
- 1270. — In general.
- 1271. — Construction and operation.
- 1272. — Performance or breach.
- 1273. Torts.
- 1274. — In general.
- 1275. — Negligence.
- 1276. — Fraud and misrepresentation.
- 1277. Duty of good faith and fair dealing.
- 1278. Fiduciary duties.
- 1279. Liability for unauthorized use of credit cards.
- 1280. Assignment and collection of credit card debt.
- 1281. Actions.
- 1282. — In general.
- 1283. — Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1284. — Parties; standing.

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XIV. CREDIT CARDS.(Cont'd)

- 1285. — Pleading.
- 1286. — Evidence.
- 1287. — Trial.
- 1288. — Judgment and relief.
- 1289. — Costs and fees.
- 1290. Penalties.

XV. CREDIT REPORTING.

- 1301. In general.
- 1302. Control and regulation in general.
- 1303. — In general.
- 1304. — Authority or license to do business.
- 1305. — Administrative agencies and proceedings.
- 1306. Contracts.
- 1307. Liability for inaccurate or incomplete information.
- 1308. Actions.
- 1309. — In general.
- 1310. — Time to sue; limitations and laches.

See also *LIMITATION OF ACTIONS*.

- 1311. — Parties; standing.
- 1312. — Pleading.
- 1313. — Evidence.
- 1314. — Trial.
- 1315. — Judgment and relief.
- 1316. — Costs and fees.

XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.

State consumer credit regulation, see III. Truth in Savings Act, see IV(1)4. Restrictions on garnishment, see CREDITORS' REMEDIES ¶1052 and LABOR AND EMPLOYMENT ¶768.

(A) IN GENERAL.

- 1321. In general.
- 1322. Truth in lending in general.
- 1323. Persons and transactions subject to or protected by regulation in general.
- 1324. Practices prohibited or required in general.
- 1325. Open-end credit, revolving charges, and credit cards.
- 1326. — In general.
- 1327. — Liability for unauthorized use of credit cards.
- 1328. Interest, charges, and fees.

Generally applicable interest and usury laws, see INTEREST, USURY.

XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.(Cont'd)

- 1329. Advertising and marketing.
- 1330. Abusive and predatory practices.

(B) DISCLOSURE REQUIREMENTS IN GENERAL.

- 1341. In general.
- 1342. Form and sufficiency of disclosure in general.
- 1343. Price, balance, rate, and charges in general.
- 1344. — In general.
- 1345. — Open-end credit, revolving charges, and credit cards; periodic statements.
- 1346. Rebates and refunds in general; prepayment penalty.
- 1347. Default, delinquency, or similar charges; acceleration clause.
- 1348. Insurance, matters relating to.
- 1349. Liens and security interests; confession of judgment clauses.
- 1350. Borrower's rights and remedies.
- 1351. Time for disclosure.

(C) MORTGAGE AND RESIDENTIAL LENDING; REAL ESTATE SETTLEMENT PRACTICES.

1. IN GENERAL.

- 1361. In general.
- 1362. Persons and transactions subject to or protected by regulation.
- 1363. Practices prohibited or required in general.
- 1364. Interest, charges, and fees.
- 1365. — In general.
- 1366. — Kickbacks and unearned fees in general.
- 1367. — Yield spread premiums and other forms of indirect compensation.
- 1368. — Affiliated business arrangements.
- 1369. Disclosure requirements.
- 1370. — In general.
- 1371. — Form and sufficiency of disclosure in general.
- 1372. — Price, balance, rate, and charges in general.
- 1373. — Rebates and refunds in general; prepayment penalty.
- 1374. — Default, delinquency, or similar charges; acceleration clause.
- 1375. — Insurance, matters relating to.

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**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1376. — Liens and security interests; confession of judgment clauses.
- 1377. — Borrower's rights and remedies.
- 1378. — Time for disclosure.

2. SERVICING.

- 1381. In general.
- 1382. Transferability of servicing, and disclosure thereof.
- 1383. Notice and effect of transfer.
- 1384. Requests and inquiries from borrowers, and responses thereto.
- 1385. — In general.
- 1386. — Qualified written requests.
- 1387. Administration of escrow accounts.
- 1388. Loss mitigation; loan modification.

(D) LEASES AND RENTAL AGREEMENTS.

- 1391. In general.
- 1392. Persons and transactions subject to or protected by regulation.
- 1393. Practices prohibited or required in general.
- 1394. Interest, charges, and fees.
- 1395. Disclosure requirements.
- 1396. — In general.
- 1397. — Motor vehicles.

(E) CREDIT BILLING.

- 1401. In general.
- 1402. Persons and transactions subject to or protected by regulation.
- 1403. Practices prohibited or required in general.
- 1404. Billing errors and disputes.

(F) CREDIT REPAIR AND COUNSELING.

- 1411. In general.
- 1412. Persons and transactions subject to or protected by regulation.
- 1413. Practices prohibited or required in general.
- 1414. Disclosure requirements.

(G) CREDIT REPORTING.

- 1421. In general.
- 1422. Persons and transactions subject to or protected by regulation.

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1423. — In general.
- 1424. — Reporting agencies.
- 1425. — Furnishers of information.
- 1426. — Users of information.
- 1427. Reports subject to regulation.
- 1428. Practices prohibited or required in general.
- 1429. Obligations of reporting agencies.
- 1430. — In general.
- 1431. — Disclosures to consumer.
- 1432. Obligations of furnishers of information.
- 1433. Obligations of requesters or users of information.
- 1434. — In general.
- 1435. — Lenders and creditors.
- 1436. — Employers.
- 1437. — Insurers.
- 1438. Liability for inaccurate or incomplete information.

**(H) CREDIT DISCRIMINATION; EQUAL
CREDIT OPPORTUNITY.**

- 1441. In general.
- 1442. Persons and transactions subject to or protected by regulation.
- 1443. — In general.
- 1444. — Creditors and credit transactions.
- 1445. — Applicants and applications for credit.
- 1446. Practices prohibited or required in general.
- 1447. Particular bases of discrimination.
- 1448. — In general.
- 1449. — Race, color, or national origin.
- 1450. — Sex or gender.
- 1451. — Marital status.
- 1452. — Age.
- 1453. — Disability.
- 1454. — Source of income; receipt of public assistance.
- 1455. Adverse action.
- 1456. — In general.
- 1457. — Notice of adverse action; statement of reasons.
- 1458. Redlining, reverse redlining, and targeting.
- 1459. Disparate impact.

172H. FINANCE, BANKING, AND CREDIT

XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.(Cont'd)

1460. Discrimination based on exercise of rights; retaliation.

(I) DEBT COLLECTION PRACTICES.

1471. In general.

1472. Persons and transactions subject to or protected by regulation.

1473. — In general.

1474. — Debt in general.

1475. — Consumers and consumer debt.

1476. — Debt collectors and debt collection in general.

1477. — Creditors and lenders; assignees and loan servicers.

1478. — Attorneys and law firms; legal services.

1479. — Process servers.

1480. Practices prohibited or required in general.

1481. Communications, representations, and notices; debtor's response.

1482. — In general.

1483. — "Least sophisticated consumer" test in general.

1484. — Particular communications, representations, notices, and responses.

1485. — Disputed debts; validation notices and responses thereto.

1486. — Communications with attorneys.

1487. — Communications with third parties.

1488. Collecting unauthorized amounts.

1489. Use of false or fictitious name.

1490. Designing, compiling, or furnishing forms; "flat-rating".

1491. Litigation conduct.

1492. — In general.

1493. — Venue.

1494. — Summons, complaints, and other process and filings.

1495. Offers to settle or compromise.

1496. Harassment and abuse.

(J) ELECTRONIC FUNDS TRANSFERS.

1501. In general.

1502. Persons and transactions subject to or protected by regulation.

XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.(Cont'd)

1503. Practices prohibited or required in general.

1504. — In general.

1505. — Fees and charges.

1506. — Notices, disclosures, and documentation.

1507. Automated teller machines (ATMs).

1508. — In general.

1509. — Fees and charges.

1510. — Notices, disclosures, and documentation.

1511. Authorization.

1512. — In general.

1513. — Disputes; unauthorized transfers and liability therefor.

1514. — Preauthorization.

(K) ENFORCEMENT, REMEDIES, AND PROCEEDINGS.

1. IN GENERAL.

1521. In general.

1522. Civil liability in general.

1523. Strict liability in general.

1524. Nature of violation.

1525. — In general.

1526. — Objective or subjective standard; actual deception or misunderstanding.

1527. — Technical or minor violations.

1528. — Number of violations; pattern or practice.

1529. Defenses and safe harbors in general.

1530. Knowledge and intent; bona fide errors; good-faith defense.

1531. — In general.

1532. — Mortgage and residential lending; real estate settlement practices.

1533. — Credit reporting.

1534. — Debt collection practices.

1535. Reliance; causation; injury, loss, or damage.

1536. — In general.

1537. — As prerequisite for monetary relief.

1538. — Mortgage and residential lending; real estate settlement practices.

1539. Persons liable.

1540. — In general.

172H. FINANCE, BANKING, AND CREDIT

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1541. — Holders in general.
- 1542. — Assignees.
- 1543. — Servicers.
- 1544. — Vicarious liability for acts of holders, assignees, and servicers.
- 1545. — Multiple creditors; joint and several liability.
- 1546. — Government entities, agencies, instrumentalities, and their assignees.
- 1547. — Debt collection practices.
- 1548. Exclusive and concurrent remedies or laws.
- 1549. Conditions precedent; exhaustion of other remedies.
- 1550. Waiver of rights or remedies.

**2. EFFECT OF VIOLATION ON ENFORCEABILITY
OF TRANSACTION.**

- 1551. In general.
- 1552. Rescission and cancellation in general.
- 1553. Transactions and violations for which rescission or cancellation may be had.
- 1554. — In general.
- 1555. — Mortgage and residential lending; real estate settlement practices.
- 1556. Time for rescission or cancellation.
- 1557. Manner of exercising right to rescission or cancellation; lender's response.
- 1558. Assertion of violation as defense to suit on underlying obligation; recoupment and set-off.
- 1559. — In general.
- 1560. — Time for assertion.
- 1561. Conditions; tender or return of consideration received.

**3. ADMINISTRATIVE AGENCIES
AND PROCEEDINGS.**

- 1571. In general.
- 1572. Officers and employees.
- 1573. Jurisdiction and authority.
- 1574. Investigations and examinations.
- 1575. Rules and regulations.
- 1576. Hearings, adjudications, and orders.
- 1577. Administrative review of administrative action.
- 1578. Judicial review and enforcement.

**XVI. FEDERAL REGULATION OF CONSUMER
FINANCE AND CREDIT.(Cont'd)**

- 1579. Administrative construction of statutes and regulations; judicial deference.
See also ADMINISTRATIVE LAW AND PROCEDURE ¶438(20).

4. ACTIONS.

- 1581. In general.
- 1582. Right of action.
- 1583. — In general.
- 1584. — Mortgage and residential lending; real estate settlement practices.
- 1585. — Credit reporting.
- 1586. — Credit discrimination; equal credit opportunity.
- 1587. — Debt collection practices.
- 1588. Time to sue; limitations and laches.
See also LIMITATION OF ACTIONS.
- 1589. — In general.
- 1590. — Mortgage and residential lending; real estate settlement practices.
- 1591. — Credit reporting.
- 1592. — Credit discrimination; equal credit opportunity.
- 1593. — Debt collection practices.
- 1594. Parties; standing.
- 1595. — In general.
- 1596. — Mortgage and residential lending; real estate settlement practices.
- 1597. — Credit reporting.
- 1598. — Credit discrimination; equal credit opportunity.
- 1599. — Debt collection practices.
- 1600. Pleading.
- 1601. — In general.
- 1602. — Mortgage and residential lending; real estate settlement practices.
- 1603. — Credit reporting.
- 1604. — Credit discrimination; equal credit opportunity.
- 1605. — Debt collection practices.
- 1606. Trial in general.
- 1607. Questions of law or fact.
- 1608. — In general.
- 1609. — Mortgage and residential lending; real estate settlement practices.
- 1610. — Credit reporting.
- 1611. — Credit discrimination; equal credit opportunity.
- 1612. — Debt collection practices.

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XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.(Cont'd)

- 1613. Instructions.
- 1614. — In general.
- 1615. — Mortgage and residential lending; real estate settlement practices.
- 1616. — Credit reporting.
- 1617. — Credit discrimination; equal credit opportunity.
- 1618. — Debt collection practices.
- 1619. Judgment and relief in general.

5. EVIDENCE.

- 1621. In general; admissibility.
- 1622. Presumptions, inferences, and burden of proof.
- 1623. — In general.
- 1624. — Mortgage and residential lending; real estate settlement practices.
- 1625. — Credit reporting.
- 1626. — Credit discrimination; equal credit opportunity.
- 1627. — Debt collection practices.
- 1628. Weight and sufficiency.
- 1629. — In general.
- 1630. — Mortgage and residential lending; real estate settlement practices.
- 1631. — Credit reporting.
- 1632. — Credit discrimination; equal credit opportunity.
- 1633. — Debt collection practices.

6. MONETARY RELIEF; DAMAGES.

- 1641. In general.
- 1642. Grounds and subjects.
- 1643. — In general.
- 1644. — Mortgage and residential lending; real estate settlement practices.
- 1645. — Credit reporting.
- 1646. — Credit discrimination; equal credit opportunity.
- 1647. — Debt collection practices.
- 1648. Measure and amount.
- 1649. Statutory damages or penalties.
- 1650. Treble damages.
- 1651. Punitive or exemplary damages.
- 1652. Proceedings to impose; evidence.

7. INJUNCTIVE RELIEF.

- 1661. In general.

XVI. FEDERAL REGULATION OF CONSUMER FINANCE AND CREDIT.(Cont'd)

- 1662. Grounds, subjects, and scope of relief.
- 1663. — In general.
- 1664. — Mortgage and residential lending; real estate settlement practices.
- 1665. — Credit reporting.
- 1666. — Credit discrimination; equal credit opportunity.
- 1667. — Debt collection practices.
- 1668. Preliminary or temporary relief.
- 1669. Proceedings to impose; evidence.
- 1670. Continuing, modifying, vacating, or dissolving.
- 1671. Violation; punishment.

8. COSTS AND FEES.

- 1681. In general.
- 1682. Mortgage and residential lending; real estate settlement practices.
- 1683. Credit reporting.
- 1684. Credit discrimination; equal credit opportunity.
- 1685. Debt collection practices.
- 1686. Proceedings to impose; evidence.

XVII. FINANCIAL RECORDS AND PRIVACY.

Fair Credit Reporting Act, see XVI(G). Electronic Funds Transfer Act, see XVI(J). Bank Secrecy Act, see CURRENCY REGULATION. Tort of invasion of privacy, see TORTS IV.

(A) IN GENERAL.

- 1691. In general.
- 1692. Persons and transactions subject to or protected by regulation.
- 1693. Information subject to regulation.
- 1694. Obligations imposed; practices prohibited or required.
- 1695. — In general.
- 1696. — Identity theft in general.
Criminal offenses, see FALSE PRETENSES V.
- 1697. — Banks and similar financial institutions, obligations and practices of.
- 1698. — Retailers and other merchants, obligations and practices of.
- 1699. Compelled disclosure.

(B) ENFORCEMENT, REMEDIES, AND PROCEEDINGS.

- 1701. In general.

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XVII. FINANCIAL RECORDS AND PRIVACY.(Cont'd)

- 1702. Administrative agencies and proceedings.
- 1703. Actions.
- 1704. — In general.
- 1705. — Right of action; standing.
- 1706. Evidence.
- 1707. Monetary relief; damages.
- 1708. Injunctive relief.
- 1709. Costs and fees.

XVIII. OFFENSES.

Credit card theft or fraud, access device theft or fraud, and identity theft or fraud, see FALSE PRETENSES V.

(A) IN GENERAL.

- 1711. In general.
- 1712. Federal jurisdiction and authority.
- 1713. Fraud and false statements.
- 1714. — In general.
- 1715. — Scheme to defraud financial institution; bank fraud.
 - (1). In general.
 - (2). By means of false or fraudulent pretenses, representations, or promises.
- 1716. — False applications for loans or credit.
- 1717. — False entries in books, reports, or statements of institution.
- 1718. — Wrongful certification of check.
- 1719. Theft, embezzlement, or misapplication of funds by officers or employees of financial institutions.
- 1720. Corruptly influencing officers or employees of financial institutions.
- 1721. Loans or gratuities to financial institution examiners.
- 1722. Insolvency-related offenses.
- 1723. Unauthorized or unlicensed activity.
- 1724. — In general.
- 1725. — Money transmitting businesses.
- 1726. Offenses involving real estate settlement procedures.
- 1727. Parties to offenses; persons liable.

(B) PROSECUTIONS.

- 1731. In general.
- 1732. Indictment and information.

XVIII. OFFENSES.(Cont'd)

- 1733. Evidence.
- 1734. — In general; admissibility.
- 1735. — Presumptions, inferences, and burden of proof.
- 1736. — Weight and sufficiency.
- 1737. Trial.
- 1738. — In general.
- 1739. — Questions of law or fact.
- 1740. — Instructions.
- 1741. Sentence and punishment.

174. FINES

SUBJECTS INCLUDED

Pecuniary punishments imposed by sentences of courts on convictions of crime
Nature and scope of such punishment in general
Constitutional and statutory provisions relating thereto
In what cases and for what offenses fines are imposed in general
Jurisdiction over and proceedings for enforcement of fines
Payment or working out fines and costs, and imprisonment for nonpayment thereof
Discharge from fines or from imprisonment therefor and disposition of moneys received for fines
Constitutional prohibition against excessive fines

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contempt of court, punishment by fine, see CONTEMPT
Pardon or commutation of sentence, effect of, see PARDON AND PAROLE
Particular offenses, fines for, see specific topics
Penalties recoverable by action for violations of statutes, see PENALTIES

- 1. Constitutional and statutory provisions.

176. FISH

- 1.3. Excessive fines.
- 1.5. Imposition and liability in general.
2. Enforcement in general.
3. Lien of judgment.
5. Application of money deposited as bail.
6. Execution against property.
7. Actions.
8. Recovery by indictment.
9. Arrest of defendant.
10. Imprisonment on nonpayment.
11. — In general.
12. — In satisfaction of fine.
13. — Discharge of prisoner.
14. Working out fine.
15. — In general.
16. — Under convict bond.
17. — Inability to labor.
- 17.5. Death of defendant.
18. Remission.
19. Payment.
20. Disposition of proceeds.
21. Rights and remedies of informers.

175. FIRES

SUBJECTS INCLUDED

- Burning or setting fire to property other than buildings and similar structures and their contents
- Refusing to aid in or obstructing extinguishment of fires
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses
- Civil liability for willful burning or setting fire

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Buildings and similar structures and their contents, burning or setting fire to, see ARSON
- Negligence causing fire, liabilities for, see NEGLIGENCE, RAILROADS and other specific topics

1. Nature and elements of offenses in general.
2. Statutory provisions.
3. Burning or setting fire.
4. Indictment or information.
5. Evidence.
6. Trial and review.
7. Civil liability for willful or criminal burning or setting fire.
8. Extinguishment of fires in fields or woods.
9. Investigation of origin of fires; search.

176. FISH

SUBJECTS INCLUDED

- Animals inhabiting the water
- Regulations for their preservation
- Nature and incidents of rights of fishery

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Indian fishing rights, see INDIANS X
- Protection of fish and other aquatic animals, particularly endangered or threatened species, see ENVIRONMENTAL LAW
- Sunday, fishing on, see SUNDAY

1. Nature of property.
2. What is fish.
3. Fish in public waters.
4. Seal fisheries.
5. Private rights of fishery.
 - (.5). In general.
 - (1). Nature, acquisition, and extent.
 - (2). Conveyances and contracts respecting fishery rights.
 - (3). Civil liability for invasion of private rights.
6. Injury to or destruction of fish.
7. Oyster and clam beds.
 - (1). In general.
 - (2). Grant, allotment, or lease by public authorities.
 - (3). Invasion of private rights.
8. Power to protect and regulate.

176. FISH

9. Constitutional and statutory provisions.
10. Licenses.
 - (1). In general.
 - (2). Fishing locations.
11. Fish wardens and other officers.
12. Preservation and propagation.
Injunctive relief, see INJUNCTION ¶1394.
13. Offenses.
 - (1). In general.
 - (2). Use of nets or other devices.
 - (3). Offenses as to oysters, clams, and other shellfish.
14. Penalties for violations of regulations.
15. Criminal prosecutions.
16. Searches, seizures, and forfeitures.
17. Rights of property and contracts as to fish illegally taken.

177. FIXTURES

SUBJECTS INCLUDED

Chattels affixed or annexed to real property
Rights and liabilities in respect to such fixtures incident to or affected by particular estates or interests in the realty

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Distinction between real property and personal property in general, see PROPERTY
Improvements on realty, rights and liabilities arising out of making, see IMPROVEMENTS, LANDLORD AND TENANT, EJECTMENT and other specific topics

1. Nature and requisites of conversion into realty in general.
2. Articles capable of annexation to realty.
3. Persons who may make annexation.
4. Intent in making annexation.
5. Purpose or use for which annexation is made.
6. Mode and sufficiency of annexation.
 - 6.1. — In general.
7. — Actual.
8. — Constructive.

9. Between owner or lienor of land and claimant of chattels.
10. Between persons in family relation and their privies.
11. Between personal representative and heir of decedent and their privies.
12. Between tenant for life and remainderman and their privies.
13. Between landlord and tenant and their privies.
14. — In general.
15. — Trade fixtures.
16. — Agricultural fixtures.
17. — Domestic or ornamental fixtures.
18. Between mortgagor and mortgagee of land and their privies.
 - 18.1. — In general.
 - 18.2. — Trade fixtures.
 - 18.3. — Domestic and ornamental fixtures.
 - 18.4. — Buildings and other structures.
 - 18.5. — Machinery.
19. — Mortgagee of land and mortgagee of chattels.
20. — Mortgagee of land and vendor or vendee of chattels.
21. Between vendor and purchaser of land and their privies.
22. Between seller and buyer of chattels.
23. Between owner of easement and owner of land subject thereto.
24. Between licensor and licensee.
25. Between owner of land and trespasser.
26. Railroad tracks and rolling stock.
27. Agreements.
 - (1). In general.
 - (2). Between landlord and tenant.
 - (3). Rights of third persons.
28. Rights and remedies of creditors and purchasers at execution sales.
29. Effect of severance.
30. Removal.
 31. — In general.
 32. — Time and manner of making.
 33. — Waiver or loss of right.
 34. — Wrongful removal.
35. Actions relating to fixtures.
 - (.5). In general.
 - (1). Nature and form of remedy.
 - (2). Parties, pleading, and evidence.
 - (3). Questions for jury.

178. FOOD

- (4). Instructions.
- (5). Verdict and findings.
- (6). Judgment and relief; damages.

178. FOOD

SUBJECTS INCLUDED

Regulation of manufacture, sale or use of articles of food and drink and of substitutes and imitations thereof

Rights of property and traffic in unwholesome or adulterated articles used as food, etc.

Liabilities for injuries from the sale, use, etc., thereof

Violations of laws relating to such articles, and prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adulteration as a public offense, see ADULTERATION

Inspection for prevention of fraud or commercial purposes, see INSPECTION

Interstate commerce, regulations regarding commodities as articles of, see COMMERCE

Intoxicants, see INTOXICATING LIQUORS

Medicines, see CONTROLLED SUBSTANCES

Poisons, see CONTROLLED SUBSTANCES and ENVIRONMENTAL LAW

Unfair trade practices under statutes, see ANTITRUST AND TRADE REGULATION

Warranties on sale, see SALES

0.5. What is food.

1. Power to make regulations.

1.1. — In general.

1.5. — State power in general.

1.6. — Municipal power in general.

1.7. — Administrative power in general.

1.8. — Milk products and substitutes.

(1). In general.

(2). State power.

(3). Municipal power.

- (4). Administrative power.
- 1.9. — Milk marketing and price.
 - (1). In general.
 - (2). State power.
 - (3). Administrative power.
- 1.10. — Meat and poultry.
- 2. Statutory and municipal regulations in general.
- 3. License and inspection.
- 4. Quantity and price.
 - 4.1. — In general.
 - 4.5. — Milk marketing.
 - (1). In general.
 - (2). Subjects of regulations.
 - (3). Classification of milk.
 - (4). Price differentials and allowances; settlement funds.
 - (5). Administrative procedure.
 - (6). Judicial review and enforcement of administrative action.
- 5. Purity and quality.
- 6. Unwholesome or unfit for use.
- 7. Substitutes or imitations in general.
- 8. Oleomargarine and other imitations of dairy products.
- 9. Imitations of lard or other fats or oils.
- 10. Imitations of vinegar.
- 11. Violations of regulations.
- 12. — In general.
- 13. — Illegal manufacture.
- 14. — Illegal sale or use.
- 15. — Misbranding or want of notice to purchasers or public.
- 16. Penalties and actions therefor.
- 17. Criminal prosecutions.
- 18. — In general.
- 19. — Preliminary proceedings.
- 20. — Indictment or information.
 - (1). In general.
 - (2). Description of purchaser.
 - (3). Description of packages.
 - (4). Possession of adulterated food with intent to sell.
 - (5). Issues, proof, and variance.
- 21. — Evidence.
- 22. — Trial and review.
- 23. — Sentence and punishment.
- 24. Searches, seizures, and forfeitures.
 - (1). In general.

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- (2). Condemnation or forfeiture proceedings.
- (2.1). — In general.
- (3). — Evidence and fact questions.
- 25. Liability for injuries.
 - 25.1. — In general.
 - 25.2. — What law governs; preemption.
 - 25.3. — Strict liability, in general.
 - 25.4. — Violation of statute or other regulation, in general.
 - 25.5. — Duty and standard of care, in general.
 - 25.6. — Inspection.
 - 25.7. — Preparation and manufacture.
 - 25.8. — Packaging, in general.
 - 25.9. — Warnings.
 - 25.10. — Nature of defect or danger, in general.
 - 25.11. — Spoilage, contamination and foreign objects.
 - (1). In general.
 - (2). Milk and dairy products.
 - (3). Meat, fish and poultry.
 - 25.12. — Temperature when consumed or served.
 - 25.13. — Nature of injury or damage.
 - 25.14. — Proximate cause.
 - 25.15. — Change in condition; tampering.
 - 25.16. — Persons entitled to sue.
 - (1). In general.
 - (2). Privity.
 - 25.17. — Persons liable.
 - 25.18. — Defenses.
 - (1). In general.
 - (2). Fault of plaintiff or third parties.
 - 25.19. — Proceedings, in general.
 - 25.20. — Pleading.
 - 25.21. — Time to sue and limitations.
 - 25.22. — Evidence in general.
 - 25.23. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Res ipsa loquitur.
 - 25.24. — Admissibility.
 - 25.25. — Weight and sufficiency.
 - (1). In general.
 - (2). Spoilage, contamination or presence of foreign object.
 - (3). Negligence or fault of defendant.
 - (4). Injury.

- (5). Proximate cause.
- (6). Fault of plaintiff or third parties.
- 25.26. — Questions for jury.
- 25.27. — Instructions.
- 25.28. — Verdict and findings.
- 26. Rights of property and contracts.

179. FORCIBLE ENTRY AND DETAINER

SUBJECTS INCLUDED

Violently taking or retaining possession of property, with threats, force or arms, against the will of another entitled to its possession, and without authority of law
Nature and extent of liability therefor in general

Remedies for recovery of possession

Criminal responsibility for such forcible entry or forcible detainer, and prosecution and punishment thereof as a public offense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Summary remedies for recovery of possession of lands—

Demised, see LANDLORD AND TENANT

Mortgaged, see MORTGAGES AND DEEDS OF TRUST

Sold, see VENDOR AND PURCHASER

Trespasses, recovery of damages, see TRESPASS

I. CIVIL LIABILITY, ¶1-48.

II. CRIMINAL RESPONSIBILITY, ¶49-59.

I. CIVIL LIABILITY.

- 1. Disseisin and remedies therefor in general.
- 2. Statutory provisions.
- 3. Right of entry to take possession without action.
- 4. Nature and elements of forcible entry.

179. FORCIBLE ENTRY AND DETAINER

I. CIVIL LIABILITY.(Cont'd)

5. Nature and elements of forcible or other unlawful detainer.
6. Nature and form of remedy.
 - (1). In general.
 - (2). Trial of title and right of possession.
7. Grounds of action in general.
8. Title to support action.
9. Prior possession of plaintiff.
 - (.5). In general.
 - (1). Necessity of possession.
 - (2). Right of possession and constructive possession.
 - (3). Sufficiency of actual possession in general.
 - (4). Residence.
 - (5). Scrambling possession.
 - (6). Fencing land.
 - (7). Possession of part of premises.
 - (8). Possession by agent or tenant.
10. Right of plaintiff to possession.
11. Notice to quit and demand of possession.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency.
 - (3). Time of giving.
 - (4). Service.
 - (5). Proof of service.
12. Defenses.
 - (1). In general.
 - (2). Title or possession of defendant.
13. Pendency of other action or proceeding.
14. Persons entitled to sue.
15. Persons against whom action may be brought.
 - (1). In general.
 - (2). Persons not in possession.
16. Jurisdiction.
 - (.5). In general.
 - (1). District courts.
 - (2). Probate courts.
 - (3). Justices of the peace.
17. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
18. Parties.
19. Process and appearance.
 - (.5). In general.
 - (1). Requisites and validity.

I. CIVIL LIABILITY.(Cont'd)

- (2). Service and return.
 - (3). Amendment of process.
20. Proceedings for taking and delivery of possession.
21. Inquisition or other summary proceeding, and review thereof.
 - (.5). In general.
 - (1). Warrant, petition, affidavit, or notice.
 - (2). Traverse and proceedings thereon in general.
 - (3). Waiver of defects.
 - (4). Amendment of warrant or affidavit.
 - (5). New trial.
 - (6). Appeal.
 - (7). Bonds and liability thereon.
22. Pleading.
 - 22.1. — In general.
23. — Mode and form in general.
24. — Complaint or petition.
 - (.5). In general.
 - (1). Requisites and sufficiency in general.
 - (2). Averment as to title or possession.
 - (3). Description of premises.
 - (4). Verification.
 - (5). Objections and waiver of defects.
25. — Plea or answer and subsequent pleadings.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Necessity for special plea or answer.
 - (3). Requisites and sufficiency.
26. — Demurrer.
27. — Amendment.
28. — Issues, proof, and variance.
29. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility in general.
 - (3). Admissibility of evidence of title.
 - (4). Weight and sufficiency.
30. Damages.
 - (1). In general.
 - (2). Elements in general.

179. FORCIBLE ENTRY AND DETAINER

I. CIVIL LIABILITY.(Cont'd)

- (3). Measure of damages in general.
- (4). Exemplary damages.
- (5). Double or treble damages.
- (6). Right of defendant to damages.
- 31. Trial.
 - 31.1. — In general.
- 32. — Scope of inquiry and powers of court.
- 33. — Mode and conduct in general.
- 34. — Questions for jury.
- 35. — Instructions.
- 36. — Verdict and findings.
- 37. New trial.
- 38. Judgment.
 - (.5). In general.
 - (1). Necessity and effect.
 - (2). Requisites, sufficiency, and validity in general.
 - (3). Conformity to pleadings, proof, and verdict.
 - (4). Default judgment.
 - (5). Amendment and setting aside.
- 39. Execution and enforcement of judgment.
- 40. — In general.
- 41. — Restitution.
- 42. Review.
 - 42.1. — In general.
- 43. — Appeal and trial de novo.
 - (.5). In general.
 - (1). Jurisdiction.
 - (2). Decisions reviewable.
 - (3). Presentation and reservation in lower court of grounds of review.
 - (4). Requisites and proceedings for transfer of cause.
 - (5). Record.
 - (6). Dismissal.
 - (7). Review, and determination and disposition of cause.
 - (8). Liabilities on bonds.
- 44. — Certiorari.
- 45. — Supersedeas and stay of proceedings.
- 46. — Restitution or re-restitution on reversal.
- 47. Costs.
- 48. Wrongful dispossession.

II. CRIMINAL RESPONSIBILITY.

- 49. Disseisin as a public offense in general.
- 50. Statutory provisions.
- 51. Nature and elements of forcible entry.
- 52. Nature and elements of forcible or other unlawful detainer.
- 53. Defenses.
- 54. Persons liable.
- 55. Persons who may prosecute.
- 56. Inquisition or other summary proceeding.
- 57. Prosecution by indictment or information.
- 58. Sentence and punishment.
- 59. Restitution in criminal prosecutions.

180. FORFEITURES

SUBJECTS INCLUDED

Loss of specific property, real or personal, as punishment for violation of law
Nature and scope of such punishment in general
Constitutional and statutory provisions relating thereto
In what cases, and as to what persons and property, and for what offenses forfeiture is imposed in general
Jurisdiction over and proceedings for condemnation of property as forfeited
Judgments or decrees therein and enforcement thereof, and review of proceedings
Effect of forfeiture
Rights of informers
Waiver or remission of forfeiture
Disposition of property forfeited

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bail bonds, recognizances, etc., forfeiture of, see BAIL, RECOGNIZANCES
Corporate charters, stock, etc., forfeiture of, see CORPORATIONS AND BUSINESS ORGANIZATIONS
Franchises, forfeiture of, see FRANCHISES and other specific topics

180. FORFEITURES

Particular offenses as grounds of forfeiture, see CONTROLLED SUBSTANCES, HOMESTEAD, INTERNAL REVENUE, USURY, WAR AND NATIONAL EMERGENCY, and other specific topics

Pecuniary punishments, see PENALTIES, FINES

Private duties or obligations, forfeiture of property or estates therein or rights under contracts for breaches of, see CONTRACTS, ESTATES IN PROPERTY, DEEDS, INSURANCE and other specific topics

Seizures for enforcement of forfeitures, see SEARCHES AND SEIZURES

I. NATURE OF FORFEITURE, ¶20-39.

II. GROUNDS OF FORFEITURE, ¶40-79.

III. PROCEEDINGS FOR FORFEITURE, ¶80-149.

IV. ACTIONS AND PROCEEDINGS AFTER FORFEITURE, ¶150-164.

I. NATURE OF FORFEITURE.

20. In general.
21. Statutes and other regulations.
22. — In general.
23. — Validity.
 - (1). In general.
 - (2). Particular statutes and regulations.
24. — Construction and operation in general.
 - (1). In general.
 - (2). Strict or liberal construction.
 - (3). Particular statutes and regulations.
25. — Retroactive or prospective operation.
 - (1). In general.
 - (2). Particular statutes and regulations.
26. — Repeal.
27. Nature and purpose of forfeiture in general.
28. Punitive or penal nature.
29. Forfeitures disfavored.
30. Discretionary or mandatory nature.
31. Relation to other remedies and concepts.
32. Operation and effect of forfeiture.
33. — In general.

I. NATURE OF FORFEITURE.(Cont'd)

34. — Time of taking effect; relation back.
35. — Joint and several liability.

II. GROUNDS OF FORFEITURE.

40. In general.
41. Probable or reasonable cause.
42. — In general.
43. — Necessity of showing.
44. — Factors and standards of application in general.
45. — Relation to standard for search or arrest.
46. — Necessity of crime or conviction; effect of acquittal.
47. — Time frame for cause determination.
48. — Particular cases.
 - (1). In general.
 - (2). Motor vehicle crimes and regulation.
 - (3). Receiving or transporting contraband.
 - (4). Racketeering and criminal organizations.
 - (5). Money laundering and reporting requirements.
 - (6). Regulation of drugs, medicine, and medical devices.
 - (7). Regulation of food and drink.
 - (8). Intoxicating liquors.
 - (9). Fraud and misrepresentation.
 - (10). Mail and wire fraud.
 - (11). Gambling and lotteries.
 - (12). Animals in general.
 - (13). Fish and game.
 - (14). Environmental regulation.
 - (15). Obscenity.
 - (16). Weights and measures.
 - (17). Firearms and other weapons offenses.
 - (18). Copyrights.
49. Property subject to forfeiture.
50. — In general.
51. — Property connected to, involved in, or facilitating wrongdoing in general.
52. — Per se or derivative contraband in general.

180. FORFEITURES

II. GROUNDS OF FORFEITURE.(Cont'd)

- 53. — Money, funds, and accounts in general.
- 54. — Real property; buildings.
- 55. — Personal property in general.
- 56. — Automobiles and other vehicles; means of transport.
- 57. — Weapons.
- 58. — Funds and property held by third party.
- 59. — Tainted or untainted determinations; commingled funds.
- 60. — Substitute assets.
- 61. — Limitation of amount in general.
- 62. — Amount, particular cases.
- 63. — Excessiveness and proportionality.
 - (1). In general.
 - (2). Particular forfeitures.
- 64. — Legal fees and funds therefor.
- 65. Defenses to forfeiture.
- 66. — In general.
- 67. — Property wrongfully seized or obtained by authorities.
- 68. — Lack of knowledge or consent; innocent owner.
 - (1). In general.
 - (2). Particular cases.
- 69. Rights of third persons.
- 70. — In general.
- 71. — Occupants or lessees.
- 72. — Co-owners.
- 73. — Creditors, lienholders, and mortgagees.
- 74. — Purchasers.

III. PROCEEDINGS FOR FORFEITURE.

- 80. In general.
- 81. Civil, criminal, or quasi-criminal nature.
- 82. In personam or in rem nature.
- 83. Federal/state issues; adoption doctrine.
- 84. Representation by counsel.
- 85. Disposition of property pending forfeiture.
 - 86. — In general.
 - 87. — Government's right to seizure or restraint.
 - 88. — Return or release of property.
 - 89. — Bonds and other security.
 - 90. — Costs related to property.

III. PROCEEDINGS FOR FORFEITURE.(Cont'd)

- 91. — Funds generated by property.
- 92. — Proceedings.
- 93. Jurisdiction and venue.
- 94. Standing; parties.
- 95. — In general.
- 96. — Particular cases.
- 97. — Waiver and disentitlement; fugitives.
- 98. Notice and process.
- 99. Time for proceedings.
- 100. Pleadings and claims.
- 101. Evidence.
 - 102. — In general.
 - 103. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Standing.
 - (3). Defenses.
 - 104. — Admissibility.
 - (1). In general.
 - (2). Exclusionary rule.
 - 105. — Weight and sufficiency.
 - (1). In general.
 - (2). Standard of proof in general.
 - (3). Direct or circumstantial evidence.
 - (4). Hearsay evidence.
 - (5). Defenses.
 - (6). Particular cases.
- 106. Trial or hearing.
- 107. — In general.
- 108. — Right to or necessity of hearing; waiver.
- 109. — Procedure in general.
- 110. — Questions of law or fact.
- 111. — Instructions.
- 112. Determination and judgment.
 - 113. — In general.
 - 114. — Summary judgment.
 - 115. — Findings and conclusions.
 - 116. — Reconsideration of or relief from judgment.
 - 117. — Default judgment and relief therefrom.
 - 118. — Operation and effect.
 - 119. Review.
 - 120. — In general.
 - 121. — Jurisdiction and authority.
 - 122. — Decisions reviewable.
 - 123. — Right of review; standing.

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III. PROCEEDINGS FOR FORFEITURE.(Cont'd)

- 124. — Preservation of error; plain error.
- 125. — Proceedings in general.
- 126. — Scope of review.
 - (1). In general.
 - (2). Plenary or de novo review.
 - (3). Presumptions and burden.
 - (4). Questions of fact and evidence.
 - (5). Harmless error.
- 127. — Determination.
 - (1). In general.
 - (2). Remand.
- 128. Further review.
- 129. Disposition of property not forfeited; interest.
- 130. Costs.

IV. ACTIONS AND PROCEEDINGS AFTER FORFEITURE.

- 150. In general.
- 151. Remission, relief, or mitigation.
- 152. — In general.
- 153. — Purpose, function, or nature of remedy.
- 154. — Mandatory or discretionary nature.
- 155. — Grounds and defenses.
 - (1). In general.
 - (2). Particular cases.
- 156. — Proceedings.
 - (1). In general.
 - (2). Jurisdiction and authority.
 - (3). Conditions precedent.
 - (4). Time for proceedings.
 - (5). Parties and standing.
 - (6). Pleading.
 - (7). Evidence.
 - (8). Hearing and determination.
 - (9). Further monetary relief; interest.
 - (10). Review.
- 157. Disposition of forfeited property or proceeds.
- 158. — In general.
- 159. — Rights of informers.
- 160. — Rights of victims and injured parties.
- 161. — Rights of spouses, family members, and heirs.
- 162. — Rights of governmental entities and officers.

IV. ACTIONS AND PROCEEDINGS AFTER FORFEITURE.(Cont'd)

- 163. — Other particular cases.
- 164. — Proceedings and review.

181. FORGERY

SUBJECTS INCLUDED

Falsely and fraudulently making or materially altering instruments in writing, other than circulating notes issued as money or other government obligations or securities, and uttering such forged instruments

Nature and elements of the crimes of forgery, uttering and publishing forged instruments, etc. and degrees thereof

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Civil rights and liabilities—

Alterations of instruments in writing in general, see ALTERATION OF INSTRUMENTS

Banks paying, discounting, etc., forged or altered paper, see FINANCE, BANKING, AND CREDIT IV(J)2

Parties to and holders of forged or altered instruments, see BILLS AND NOTES, BONDS and other specific topics

Counterfeit coin or other money or government securities, offenses of making, passing, etc., see COUNTERFEITING

Interstate transportation of forged securities, etc., see RECEIVING STOLEN GOODS

- 1. Nature of offense in general.
- 2. Statutory provisions.
- 3. Elements of offenses.
- 4. — In general.
- 5. — Intent.
- 6. — Want of authority.
- 7. — Nature of instrument.

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- (1). In general.
- (2). Negotiable instruments.
- (3). Order for payment of money.
- (4). Order for delivery of goods.
- (5). Certificates and warrants.
8. — Name or signature used.
9. — Making false instrument or signature.
10. — Alteration or destruction of instrument.
11. — Similitude of false instrument or signature to genuine.
12. — Apparent legal efficacy or operation of instrument.
 - (.5). In general.
 - (1). Compliance with statutory requirements and invalidity appearing from face of instrument.
 - (2). Legal operation of instrument.
 - (3). Legal capacity of apparent maker, and obligation as between apparent parties to instrument.
 - (4). Possibility of prejudice from or deception by instrument.
 - (5). Absence of seal, or of revenue stamp, and uncertainty.
13. — Fraudulent use of instrument.
14. — Injury from forgery.
15. False entries or records, and alteration of entries or records.
16. Uttering or publishing forged instrument.
17. Possession of forged instrument or of means of forgery.
18. Degrees.
19. Attempts.
20. Defenses.
21. Persons liable.
22. Jurisdiction.
23. Venue.
24. Preliminary proceedings in prosecution.
25. Indictment or information.
26. — In general.
27. — Intent.
28. — Description of or setting forth instrument.
 - (1). In general.
 - (2). Copy, tenor, or facsimile of instrument.
 - (3). Purport of instrument.
 - (4). Designation of instrument by name.
 - (5). Instrument lost, defaced, or in possession of prisoner.
29. — Facts extrinsic to instrument in general.
 - (1). In general.
 - (2). How instrument might defraud.
 - (3). Explanation of defects of expression.
 - (4). Authority of apparent makers or parties to instrument.
 - (5). Description of person defrauded.
30. — Making or alteration of instrument.
31. — Falsification of entries or records.
32. — Uttering or publishing forged instrument.
33. — Possession of forged instrument or of means of forgery.
34. — Issues, proof, and variance.
 - (1). In general.
 - (2). Variance between allegations and proof in general.
 - (3). Variance as to indorsements and signatures.
 - (4). Variance as to intent to defraud.
 - (5). Variance as to manner in which offense was committed.
 - (6). Variance as to form of instrument.
 - (7). Variance as to terms, conditions, and clauses in general.
 - (8). Variance as to names of persons.
 - (9). Variance as to abbreviations, misspelling, clerical errors, or dates.
35. Presumptions and burden of proof.
36. Admissibility of evidence.
37. — In general.
38. — Intent and knowledge.
39. — Making or alteration of instrument, signature, or entry.
40. — Uttering or publishing forged instrument.
41. — Possession of forged instrument or of means of forgery.
42. — Incriminating circumstances.
43. — Matters of defense.
44. Weight and sufficiency of evidence.
 - (.5). In general.
 - (1). Fraudulent intent and knowledge.

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- (2). Making false instrument or signature and forged character of paper.
- (3). Uttering false instrument and alteration of instrument.
- 45. Trial.
- 46. — In general.
- 47. — Questions for jury.
- 48. — Instructions.
- 49. — Verdict.
- 51. Sentence and punishment.

- 6. Transfer or incumbrance.
- 7. — In general.
- 8. — Sale or assignment.
- 9. — Lease.
- 10. — Mortgage.
- 11. Duration and termination in general.
- 12. Forfeiture.
- 12.1. — In general.
- 13. — Grounds.
- 14. — Waiver and estoppel.
- 15. — Proceedings to enforce.
- 16. — Operation and effect.

183. FRANCHISES

SUBJECTS INCLUDED

Nature and incidents of special rights, privileges and powers which can be exercised legally only under a grant from the government

Exercise and protection of franchises in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporate franchises, see CORPORATIONS AND BUSINESS ORGANIZATIONS and specific topics relating to particular kinds of corporations

Licenses to engage in occupation, see LICENSES and specific topics

Particular kinds of business or occupations, franchises necessary or incident to, see ELECTRICITY and other specific topics

Private contracts authorizing the conduct of businesses, see CONTRACTS

Statutory regulation of such contractual arrangements, see ANTITRUST AND TRADE REGULATION

Validity of grants of exclusive privileges, see ANTITRUST AND TRADE REGULATION

- 1. Nature of right.
- 2. Grants in general.
- 3. Extent and exercise of rights.
- 4. Exclusiveness and conflicting grants.
- 5. Obstruction or disturbance.

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SUBJECTS INCLUDED

Deception or perversion of the truth by statements, acts or omissions, intended or operating to injure another by depriving him of any property or right or obtaining any promise or unlawful or unfair advantage, not constituting or not regarded as a tort or offense of any distinct class

Evidence relating thereto

Nature and extent of liability for such fraud in general

Actions for deceit and like actions for damages for fraud

Criminal responsibility for fraud in general, and prosecution and punishment thereof as a public offense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Cancellation of instruments in writing, fraud as ground for, see CANCELLATION OF INSTRUMENTS

Conspiracies to defraud, see CONSPIRACY

Conveyances fraudulent as to creditors, purchasers, etc., see FRAUDULENT CONVEYANCES

Effect of fraud on conveyances, contracts and other transactions, see CONTRACTS, BILLS AND NOTES, DEEDS, INSURANCE and other specific topics

184. FRAUD

Frauds, statute of, requirements and operation, see FRAUDS, STATUTE OF

Limitations, suspension on ground of fraud, see LIMITATION OF ACTIONS

Particular offenses involving fraud, see FALSE PRETENSES and other specific topics

Particular personal relations, fraud in transactions between persons occupying, see ACCOUNTANTS, ANNUITIES, ATTORNEY AND CLIENT, BROKERS, MARRIAGE AND COHABITATION, INSURANCE, PRINCIPAL AND AGENT, and other specific topics

Particular remedies in actions, fraud as ground for, see ARREST, CREDITORS' REMEDIES, PRETRIAL PROCEDURE, and other specific topics

Reformation of instruments in writing, fraud as ground for, see REFORMATION OF INSTRUMENTS

I. DECEPTION CONSTITUTING FRAUD, AND LIABILITY THEREFOR, ¶1-30.

II. ACTIONS, ¶31-67.

(A) RIGHTS OF ACTION AND DEFENSES, ¶31-38.

(B) PARTIES, ¶39.

(C) PLEADING, ¶40-49.

(D) EVIDENCE, ¶50-58.

(E) DAMAGES, ¶59-62.

(F) TRIAL, ¶63-66.

(G) JUDGMENT, ¶67.

III. CRIMINAL RESPONSIBILITY, ¶68-69.

I. DECEPTION CONSTITUTING FRAUD, AND LIABILITY THEREFOR.

1. Nature of fraud.
- 1.5. What law governs.
2. Elements of actual fraud.
3. — In general.
4. — Intent.
- 4.5. — Deceptive statements or acts.
5. Elements of constructive fraud.
6. — In general.
7. — Fiduciary or confidential relations.
Interference with fiduciary or confidential relationship, see TORTS ¶204.
8. Fraudulent representations.
9. — In general.
10. — Matters of fact or of law.

I. DECEPTION CONSTITUTING FRAUD, AND LIABILITY THEREFOR.(Cont'd)

11. — Matters of fact or of opinion.
 - (1). In general.
 - (2). Value.
12. — Existing facts or expectations or promises.
13. — Falsity and knowledge thereof.
 - (5). In general.
 - (1). Falsity of representations.
 - (2). Knowledge of defendant.
 - (3). Statements recklessly made; negligent misrepresentation.
14. Fraudulent warranties.
15. Fraudulent concealment.
16. — In general.
17. — Duty to disclose facts.
18. Materiality of matter represented or concealed.
19. Reliance on representations and inducement to act.
20. — In general.
21. — Persons who may rely on representations.
22. — Duty to investigate.
 - (1). In general.
 - (2). Inducement not to investigate.
23. — Relations and means of knowledge of parties.
24. Acts induced by fraud.
25. Injury and causation.
26. Interest of or benefit to defendant.
27. Fraudulent representations or concealment as to particular facts.
28. Fraud in particular transactions or for particular purposes.
29. Persons entitled to sue.
30. Persons liable.

II. ACTIONS.

(A) RIGHTS OF ACTION AND DEFENSES.

31. Nature and form of remedy.
32. Effect of existence of remedy by action on contract.
33. Grounds of action.
34. Conditions precedent.
35. Waiver of right of action.
36. Defenses.

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II. ACTIONS.(Cont'd)

- 37. Jurisdiction and venue.
- 38. Time to sue and limitations.
See also LIMITATION OF ACTIONS.

(B) PARTIES.

- 39. In general.

(C) PLEADING.

- 40. In general.
- 40.1. — In general.
- 41. Allegations of fraud in general.
- 42. Intent.
- 43. Statements, acts, or conduct constituting fraud.
- 44. Contract, transaction, or circumstances connected with fraud.
- 45. Falsity of representations and knowledge thereof.
- 46. Reliance and inducement and action thereon.
- 47. Damage from fraud.
- 48. Matters of defense.
- 49. Issues, proof, and variance.

(D) EVIDENCE.

- 50. Presumptions and burden of proof.
- 51. Admissibility.
- 52. — In general.
- 53. — Falsity of representations.
- 54. — Intent and knowledge.
- 55. — Nature and circumstances of fraud.
- 56. — Reliance on representations and inducement to act.
- 57. — Damages.
- 58. Weight and sufficiency.
 - (1). In general.
 - (2). Falsity of representations and knowledge thereof.
 - (3). Intent.
 - (4). Reliance on representations and inducement to act.

(E) DAMAGES.

- 59. Measure in general.
 - (1). In general.
 - (2). Difference between actual and represented value.
 - (3). Difference between value and price paid.

II. ACTIONS.(Cont'd)

- (4). Nominal damages.
- 60. Elements of compensation.
- 61. Exemplary.
- 62. Amount awarded.

(F) TRIAL.

- 63. Mode and conduct of trial in general.
- 64. Questions for jury.
 - (1). In general.
 - (2). Intent.
 - (3). Falsity of representations and knowledge thereof.
 - (4). Materiality of matter represented or concealed.
 - (5). Reliance on representations and inducement to act.
- 65. Instructions.
 - (1). In general.
 - (2). Intent.
 - (3). Falsity of representations and knowledge thereof.
 - (4). Reliance on representations and inducement to act.
- 66. Verdict and findings.

(G) JUDGMENT.

- 67. In general.

III. CRIMINAL RESPONSIBILITY.

- 68. Offenses in general.
- 68.5. False or deceptive advertising.
- 68.10. Fraud on government.
 - (1). In general; false statements or entries.
 - (2). Knowledge, intent, and purpose.
 - (3). Department or agency of government; jurisdiction.
 - (4). Materiality and effect.
- 69. Prosecution and punishment.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (6). Questions for jury.
 - (7). Instructions.

185. FRAUDS, STATUTE OF

185. FRAUDS, STATUTE OF

SUBJECTS INCLUDED

Statutory provisions making a writing necessary to the creation, assignment or surrender of estates in land, the bringing of actions on promises, agreements or representations, or the validity of contracts

Operation and effect of such provisions in general

Requisites and sufficiency of the instrument, agreement, memorandum or note in writing required by statute, or of the acceptance and receipt of goods or giving of earnest or part payment therefor required on contracts for sale, etc.

Effect of part or full performance in general

Pleading the statute and evidence relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Limitation of actions, necessity of writing to bar, see **LIMITATION OF ACTIONS**

Parol evidence as to contracts, see **EVIDENCE**

Particular contracts and transactions, necessity and sufficiency of writing independently of statute or under special modern statutes, see **BROKERS, CONTRACTS, GIFTS, LANDLORD AND TENANT** and other specific topics

Specific performance of contract despite bar by statute of frauds, and partial or full performance as ground for such relief, see **SPECIFIC PERFORMANCE**

Trusts, necessity of writing to create, see **TRUSTS**

I. IN GENERAL, ¶1.1-6.

(A) IN GENERAL, ¶1.1-1.8.

(B) AGREEMENTS IN CONSIDERATION OF MARRIAGE, ¶1.9-6.

II. PROMISES BY EXECUTORS OR ADMINISTRATORS, ¶7-12.

III. PROMISES TO ANSWER FOR DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER, ¶13-36.

IV. REPRESENTATIONS, ¶37-42.

V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR OR DURING LIFETIME, ¶43-54.5.

VI. REAL PROPERTY AND ESTATES AND INTERESTS THEREIN, ¶55-80.

VII. SALES OF PERSONAL PROPERTY, ¶81-96.

(A) CONTRACTS WITHIN STATUTE, ¶81-86.

(B) ACCEPTANCE OF PART OF PROPERTY, ¶87-91.

(C) GIVING EARNEST OR PART PAYMENT, ¶92-96.

VIII. REQUISITES AND SUFFICIENCY OF WRITING, ¶97-118.

IX. OPERATION AND EFFECT OF STATUTE, ¶122.5-144.

X. PLEADING, ¶145-156.

XI. OBJECTIONS TO EVIDENCE OF ORAL CONTRACT, ¶157.

XII. EVIDENCE, ¶158.

XIII. TRIAL, ¶159-161.

XIV. REVIEW, ¶162.

I. IN GENERAL.

(A) IN GENERAL.

1.1. In general.

1.2. Purpose.

1.3. Statute as instrument of fraud.

1.4. What law governs.

1.5. Construction of statute in general.

1.6. Retroactive operation of statute.

1.7. Miscellaneous particular cases, in general.

1.8. Credit agreements.

(B) AGREEMENTS IN CONSIDERATION OF MARRIAGE.

1.9. In general.

1.10. Statutory provisions.

2. Nature and subject of agreement in general.

3. Mutual promises to marry.

4. Marriage settlements.

5. Marriage as consideration.

6. Marriage as acceptance of promise.

II. PROMISES BY EXECUTORS OR ADMINISTRATORS.

7. Statutory provisions.

8. Nature of liability of decedent.

9. Promise to answer in general.

10. Promises before issue of letters.

11. Answering out of promisor's own estate.

12. Effect of discharge of decedent's estate.

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III. PROMISES TO ANSWER FOR DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER.

13. Statutory provisions.
14. Nature of debt, default, or miscarriage.
15. Liability of original or principal debtor.
16. Pre-existing liability of promisor.
17. Promise to answer in general.
18. Promise to debtor to discharge debt.
 - (1). In general.
 - (2). Promises founded on consideration in general.
 - (3). Assumption of debt in consideration of transfer of property.
 - (4). Promises on transfer of partnership property.
19. Promise to indemnify.
20. — In general.
21. — Coexisting liability of another.
22. — Contracts of insurance.
23. Original or collateral promise in general.
 - (1). In general.
 - (2). Construction contracts.
 - (3). Contracts to pay for property sold.
 - (4). Contracts to pay for services and expenses.
24. Intent of parties.
25. Obligation of promisor independent of liability of principal.
26. Credit given to promisor.
 - (1). In general.
 - (2). Credit given to principal debtor.
 - (3). Decisions as to whom credit was in fact given.
 - (4). Promises made to secure credit for promisor's contractor.
 - (5). Delivery or performance on request of promisor after refusal of credit to principal.
 - (6). Promises on behalf of persons ill or injured.
 - (7). Charges on creditor's books.
27. Promise to make, accept, or indorse bill or note.
28. Promise on transfer of bill or note and mortgage.
29. Guaranty of factor or agent del credere.
30. Discharge of original debtor.
31. — In general.
32. — Novation.

III. PROMISES TO ANSWER FOR DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER.(Cont'd)

33. New consideration beneficial to promisor.
 - (1). In general.
 - (2). What is sufficient consideration in general.
 - (3). Forbearance by creditor.
34. Promise to apply or pay from property of debtor.
35. Release or transfer of lien or security.
36. Purchase of debt.

IV. REPRESENTATIONS.

37. Statutory provisions.
38. Nature and subject-matter.
39. Intent or purpose.
40. Scope and effect.
41. Effect of promise to answer for debt.
42. Effect of fraud.

V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR OR DURING LIFETIME.

43. Statutory provisions.
44. Nature and subject-matter.
 - (1). In general.
 - (2). Contracts creating partnership or agency.
 - (3). Contracts of employment.
 - (4). Contracts of sale, leasing, or hiring.
 - (5). Contracts in restraint of trade.
45. Stipulations as to time.
 - (.5). In general.
 - (1). Decisions as to whether contract is to be performed within one year.
 - (2). Necessity of stipulation.
 - (3). Restatement of contract within the year.
46. Intent of parties.
47. Probability of performance and expectation of parties.
48. Possibility of performance.
49. — In general.
50. — Dependent on contingency.
 - (1). In general.
 - (2). Contracts continuing for life or terminating at death.

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V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR OR DURING LIFETIME.(Cont'd)

- 51. Possibility of discharge or other termination without performance.
- 52. Time of actual performance or termination.
- 53. Commencement of period.
- 54. Sufficiency of performance possible within year.
- 54.5. Agreements not to be performed during lifetime of promisor.

VI. REAL PROPERTY AND ESTATES AND INTERESTS THEREIN.

- 55. Statutory provisions.
- 56. Creation of estates or interests in general.
 - (1). In general.
 - (2). Parol evidence to establish title.
 - (3). Agreements in relation to timber.
 - (4). Agreements in relation to incumbrances and liens.
 - (5). Agreements relating to purchase or sale of land.
 - (6). Agreements relating to leases.
 - (7). Agreements between husband and wife as to rights in land.
 - (8). Agreements as to mining claims.
 - (9). Formation of partnership or association.
- 57. Creation of leases.
- 58. — In general.
 - (1). In general.
 - (2). Extensions and renewals.
- 59. — Statutory exceptions.
- 60. Creation of easements.
 - (1). In general.
 - (2). In relation to water rights.
- 61. Creation of licenses.
- 62. Assignment, grant, or surrender of existing estates, interests, or terms.
- 63. — In general.
 - (1). In general.
 - (2). Interests created by leases.
 - (3). Interests created by easements.
 - (4). Interests created by contracts of sale.
 - (5). Interests created by mortgages, liens, or trusts.

VI. REAL PROPERTY AND ESTATES AND INTERESTS THEREIN.(Cont'd)

- (6). Assignment of dower or interest of heir.
- (7). Dedication.
- 64. — Act or operation of law.
- 65. — Redelivery, destruction, or alteration of deed.
- 66. — Equitable mortgage by deposit of title deeds.
- 67. — Assignment of mortgage.
- 68. — Partition.
- 69. — Exchange.
- 70. — Establishment of boundary.
- 71. Contracts for sale.
 - 71.1. — In general.
- 72. — Nature of property.
 - (1). In general.
 - (2). Crops.
 - (3). Timber.
 - (4). Improvements and fixtures.
- 73. — Interest in or concerning property.
- 74. — Nature of contract in general.
 - (1). In general.
 - (2). Promises to reconvey.
 - (3). Contracts to transfer mortgaged property or interests therein.
 - (4). Contract to support grantor.
- 75. — Contracts to adopt or devise.
- 76. — Partnership contracts and lands.
- 77. — Sales by auction.
- 78. — Judicial sales.
- 79. — Possession under contract.
- 80. — Receipt of purchase money.

VII. SALES OF PERSONAL PROPERTY.

(A) CONTRACTS WITHIN STATUTE.

- 81. Statutory provisions.
- 82. Nature of property.
- 83. Existence and condition of goods.
- 84. Nature of contract.
- 85. Nature and amount of price.
- 86. Separate articles included in same transaction.

(B) ACCEPTANCE OF PART OF PROPERTY.

- 87. Statutory provisions.
- 88. Time for acceptance and receipt.
- 89. Acceptance in general.

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**VII. SALES OF PERSONAL
PROPERTY.(Cont'd)**

- (1). In general.
- (2). Necessity.
- (3). Sufficiency in general.
- (4). Delivery to carrier.
- 90. Delivery and receipt.
 - (1). In general.
 - (2). Sufficiency in general.
 - (3). Delivery to carrier.
 - (4). Delivery of part of goods.
- 91. Quantity of goods.

(C) GIVING EARNEST OR PART PAYMENT.

- 92. Statutory provisions.
- 93. Time for giving or making.
- 94. Earnest.
- 95. Part payment.
 - (1). In general.
 - (2). Agreement to credit seller's account.
- 96. Tender not accepted.

**VIII. REQUISITES AND SUFFICIENCY
OF WRITING.**

- 97. Statutory provisions.
- 98. Creation or conveyance of estates or interests in real property.
- 98.1. — In general.
- 99. — Nature and form of instrument.
- 100. — Contents of instrument.
- 101. — Signature in general.
- 102. — Signature by agent.
- 103. Nature and form of memorandum in general.
 - (1). In general.
 - (2). Oral acceptance of written offer.
 - (3). Public records.
 - (5). Pleadings.
- 104. Time of making memorandum.
- 105. Contents of memorandum.
- 106. — In general.
 - (1). In general.
 - (2). Agreements relating to land.
- 107. — Designation and description of parties.
 - (1). In general.
 - (2). Necessity.
- 108. — Statement of consideration.

**VIII. REQUISITES AND SUFFICIENCY
OF WRITING.(Cont'd)**

- (1). In general.
- (2). Agreements in consideration of marriage.
- (3). Notes and bonds, undertakings, and promises to answer for another.
- (4). Agreements relating to land.
- (5). Sales of goods.
- 109. — Subject-matter in general.
- 110. — Description of lands.
 - (.5). In general.
 - (1). Sufficiency in general.
 - (2). Designation as adjoining other lands.
 - (3). Designation by street and number.
 - (4). Local appellation.
- 111. — Description of goods.
- 112. — Statement of price.
- 113. — Statement of terms and conditions.
 - (1). In general.
 - (2). Necessity that writing show all the terms.
 - (3). Sufficiency.
- 114. Signature of memorandum.
- 115. — In general.
- 115.1. — Necessity.
- 115.2. — Sufficiency in general.
- 115.3. — Sufficiency of signature by one party only.
 - (1). In general.
 - (2). Agreements relating to land.
- 115.4. — Position of signature.
- 116. — By agent.
 - (.5). In general.
 - (1). Signature in name of agent.
 - (3). Necessity that agent's authority be in writing in general.
 - (5). Necessity that agent's authority in agreements relating to land be in writing.
 - (6). Agency for both parties.
 - (7). Memorandum by auctioneer.
 - (8). Sufficiency of authority.
 - (9). Necessity for disclosing agency.
 - (10). Ratification of agent's contract.
- 117. Delivery of memorandum.
- 118. Separate writings.
 - (1). In general.

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VIII. REQUISITES AND SUFFICIENCY OF WRITING.(Cont'd)

- (2). Writings connected by internal reference.
- (3). Correspondence.
- (4). Letters and other documents.
- (5). Parol evidence to connect writings.

IX. OPERATION AND EFFECT OF STATUTE.

- 122.5. Operation as to rights or remedies in general.
- 123. Operation as tenancy from year to year, month to month, or at will, of estate or interest created without writing.
 - (5). In general.
 - (1). Estate at will.
 - (2). Tenancy from year to year.
 - (3). Tenancy from month to month.
- 124. Validity of conveyances without deed or note in writing.
- 125. Validity and enforcement of contracts in general.
 - (1). In general.
 - (2). Damages for breach of parol contract.
 - (3). Contracts treated as void or voidable.
- 126. Promise to reduce agreement to writing.
- 127. Writing subsequent to oral agreement.
- 128. Effect on collateral or subsequent contracts.
- 129. Part performance in general.
 - (1). In general.
 - (2). Agreements not to be performed within one year.
 - (3). Agreements relating to real property in general.
 - (4). Possession in general.
 - (5). Payment of price in general.
 - (6). Performance of conditions.
 - (7). Improvements in general.
 - (8). Possession and payment.
 - (9). Possession and improvements.
 - (10). Payment and improvements.
 - (11). Possession, payment, and improvements.
 - (12). Necessity that part performance relied on be referable to contract.

IX. OPERATION AND EFFECT OF STATUTE.(Cont'd)

- 130. Contracts in part within statute.
 - (1). In general.
 - (2). Contracts including real property.
 - 131. Modification of contract.
 - (1). In general.
 - (2). Agreements changing time of performance.
 - 132. Readiness and willingness to perform contract.
 - 133. Contracts performed as to part within statute.
 - 134. Contracts performed only as to part not within statute.
 - 135. — In general.
 - 136. — Agreements not to be performed within one year.
 - 137. — Agreements relating to real property.
 - 138. Contracts implied by law on part performance.
 - (1). In general.
 - (2). Recovery of money paid.
 - (3). Recovery for property transferred.
 - (4). Recovery for services.
 - (5). Recovery for improvements.
 - 139. Contracts completely performed.
 - (1). In general.
 - (2). Agreements in consideration of marriage.
 - (3). Promises to answer for another.
 - (4). Agreements creating interests in land.
 - (5). Agreements to convey land.
 - (6). Agreements for sale of goods.
 - 140. Discharge of contracts without performance.
 - 141. Contracts as ground of defense.
 - 142. Contracts as ground for equitable relief.
 - 143. Persons to whom statute is available.
 - (1). In general.
 - (2). Creditors.
 - (3). Purchasers.
 - (4). Executors and heirs.
 - 144. Waiver of bar of statute; estoppel.
- ### X. PLEADING.
- 145. Pleading contract or transaction within statute.

186. FRAUDULENT CONVEYANCES

X. PLEADING.(Cont'd)

- 145.1. — In general.
- 146. — As cause of action in general.
- 147. — As ground of defense.
- 148. — Writing or other compliance with statute.
 - (1). In general.
 - (2). Presumptions arising from failure to allege compliance with statute.
- 149. — Matter in avoidance of bar of statute.
- 150. Demurrer raising defense.
 - (.5). In general.
 - (1). Sufficiency of demurrer to raise defense in general.
 - (2). Pleadings failing to allege compliance with statute.
 - (3). Pleadings showing noncompliance with statute.
- 151. Pleading statute as defense.
- 151.1. — In general.
- 152. — Necessity.
 - (1). In general.
 - (2). Waiver by failure to plead.
 - (3). Effect of admitting existence of contract.
- 153. — Sufficiency of denials and allegations.
- 154. — Amendment to plead statute.
- 155. — Demurrer or reply to plea or answer.
- 156. Issues, proof, and variance.

XI. OBJECTIONS TO EVIDENCE OF ORAL CONTRACT.

- 157. In general.

XII. EVIDENCE.

- 158. In general.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility in general.
 - (3). Admissibility of evidence to aid memorandum.
 - (4). Sufficiency.

XIII. TRIAL.

- 159. Questions for jury.

XIII. TRIAL.(Cont'd)

- 160. Instructions.
- 161. Verdict and findings.

XIV. REVIEW.

- 162. In general.

186. FRAUDULENT CONVEYANCES

SUBJECTS INCLUDED

Transfers of property, and other transactions or proceedings, void as to creditors because intended or operating to delay, hinder, or defraud them

Conveyances void as to subsequent purchasers for inadequacy of consideration, reservation of power to revoke them, etc.

Bulk sales of stock in trade operating to defeat creditors

Evidence relating thereto

Rights, liabilities and remedies in general of the parties and those claiming under them, and of creditors and subsequent purchasers, more particularly actions to set aside such transfers

Criminal responsibility for such fraudulent transfers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assignments for benefit of creditors, fraud in, see CREDITORS' REMEDIES ¶1172

Bankrupt or insolvent laws, transfers fraudulent under, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183

Chattel mortgages invalid as to creditors on grounds other than fraud, see CHATTEL MORTGAGES

Conveyances in fraud of—

Alimony, see DIVORCE

Dower, see DESCENT AND DISTRIBUTION IV

Spouse generally, see MARRIAGE AND COHABITATION

186. FRAUDULENT CONVEYANCES

Corporate property, transfers invalid as against creditors, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Fraudulent disposition of property as ground for—

Arrest, see ARREST

Attachment, see CREDITORS' REMEDIES

Partners, transfers fraudulent as to partnership or individual creditors, see PARTNERSHIP

Proceedings by judgment creditors to subject property to their judgments, by action or supplementary proceedings, see CREDITORS' REMEDIES

I. TRANSFERS AND TRANSACTIONS INVALID, ¶1-171.

- (A) GROUNDS OF INVALIDITY IN GENERAL, ¶1-22.
- (B) NATURE AND FORM OF TRANSFER, ¶23-41.
- (C) PROPERTY AND RIGHTS TRANSFERRED, ¶43-53.
- (D) INDEBTEDNESS OF GRANTOR, ¶54-55.
- (E) INSOLVENCY OF GRANTOR, ¶56-62.
- (F) INTENT OF GRANTOR, ¶63-72.
- (G) CONSIDERATION, ¶73-100.
- (H) CONFIDENTIAL RELATIONS OF PARTIES, ¶101-108.
- (I) RESERVATIONS AND TRUSTS FOR GRANTOR, ¶109-113.
- (J) PREFERENCES TO CREDITORS, ¶114-130.
- (K) RETENTION OF POSSESSION OR APPARENT TITLE BY GRANTOR, ¶131-154.
- (L) KNOWLEDGE AND INTENT OF GRANTEE, ¶155-171.

II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS, ¶172-204.

- (A) ORIGINAL PARTIES, ¶172-188.
- (B) PURCHASERS FROM GRANTOR, ¶189-192.
- (C) PURCHASERS FROM GRANTEE IN GENERAL, ¶193-195.
- (D) BONA FIDE PURCHASERS FROM GRANTEE, ¶196-204.

III. REMEDIES OF CREDITORS AND PURCHASERS, ¶205-328.

- (A) PERSONS ENTITLED TO ASSERT INVALIDITY, ¶205-225.

III. REMEDIES OF CREDITORS AND PURCHASERS—Cont'd

- (B) REMEDIES ON GROUND OF NULLITY OF TRANSFER, ¶226-235.

- (C) RIGHT OF ACTION TO SET ASIDE TRANSFER, AND DEFENSES, ¶237-244.

- (D) JURISDICTION, ¶245-246.

- (E) VENUE, ¶247.

- (F) TIME TO SUE, ¶248-249.

- (G) PARTIES, ¶250-257.

- (H) PLEADING, ¶258-269.

- (I) EVIDENCE, ¶270-302.

- (J) DISCOVERY, ¶303.

- (K) INJUNCTION (OBSOLETE, SEE INJUNCTION ¶1232).

- (L) RECEIVER, ¶305.

- (M) TRIAL, ¶306-310.

- (N) JUDGMENT OR DECREE, ¶311-315.

- (O) EXECUTION AND ENFORCEMENT, ¶316-317.

- (P) DISPOSITION OF PROPERTY OR PROCEEDS, ¶318-324.

- (Q) REVIEW, ¶325-328.

IV. CRIMINAL RESPONSIBILITY, ¶329-331.

I. TRANSFERS AND TRANSACTIONS INVALID.

(A) GROUNDS OF INVALIDITY IN GENERAL.

- 1. Nature of fraud in transfers of property.
- 1.5. What law governs.
- 2. Statutory provisions.
- 2.1. — In general.
- 3. — Protection of creditors.
- 4. — Protection of subsequent purchasers.
- 5. — Construction in general.
- 6. — Retroactive operation.
- 7. Elements of fraud as to creditors.
- 8. — In general.
- 9. — Intent.
- 10. — Disposition of property.
- 11. — Effect of transaction to delay, hinder, or defraud.
- 12. Elements of fraud as to subsequent purchasers.
- 13. Badges of fraud.
- 14. — In general.
- 15. — Particular facts and circumstances.
- 16. — Conclusiveness and effect.
- 17. Transactions valid in inception.

186. FRAUDULENT CONVEYANCES

I. TRANSFERS AND TRANSACTIONS INVALID. (Cont'd)

- 18. Transactions fraudulent in part.
- 18.1. — In general.
- 19. — Fraud as to part of property.
- 20. — Fraud as to one or more grantees.
- 21. — Fraud in one or more separate conveyances or transactions.
- 22. Purging transaction of fraud.

(B) NATURE AND FORM OF TRANSFER.

- 23. Element or evidence of fraud in general.
- 24. Transactions subject to attack by creditors.
 - (1). In general.
 - (2). Transactions to hinder and delay creditors.
 - (3). Description of property, or consideration.
- 25. Transactions subject to attack by subsequent purchasers.
- 26. Absolute transfers.
 - (.5). In general.
 - (1). Sales and conveyances in general.
 - (2). Sales on credit.
 - (3). Absolute transfers intended as security.
- 27. Transfers as security.
- 28. Payment or satisfaction of liabilities.
- 29. Collusive legal proceedings in general.
 - (1). In general.
 - (2). Collusive judgment.
 - (3). Preventing competitive bidding at judicial sale.
- 30. Confession of judgment.
- 31. Suffering levy of attachment or execution.
- 32. Suffering loss of property.
- 33. Release of right to conveyance, or reconveyance.
- 34. Rescission of contract.
- 35. Conditional purchases by debtor.
- 36. Loan or hire of chattels.
- 37. Placing or leaving property in possession of agent.
- 38. Purchase of exempt property or homestead.
- 39. Payment of premiums for insurance.
- 40. Conducting business in name of another.
- 41. Organization of corporation.

(C) PROPERTY AND RIGHTS TRANSFERRED.

- 43. Property subject to claims of creditors in general.
 - (1). In general.
 - (2). Property belonging to wife of debtor.
 - (3). Earnings of debtor or his minor children.
- 44. Interest of debtor in property in general.
- 45. Real property.
- 46. Personal property in general.
- 47. Stock in trade; bulk sales.
- 48. Rights in action.
- 49. Particular estates and interests.
 - (.5). In general.
 - (1). Property held in trust.
 - (2). Reconveyance of property fraudulently conveyed.
 - (3). Interest of debtor as tenant by curtesy.
- 50. Property or rights without pecuniary value.
- 51. Exempt property in general.
 - (1). In general.
 - (2). Earnings of debtor.
 - (3). Pension money.
 - (4). Life insurance.
- 52. Homestead.
 - (1). In general.
 - (2). Necessity of selection.
 - (3). Homestead included in sale of other property.
 - (4). Proceeds of sale of homestead.
 - (5). Crops grown on homestead.
 - (6). Reversion of fee in homestead.
- 53. Property in other state or county.

(D) INDEBTEDNESS OF GRANTOR.

- 54. Indebtedness element of fraud.
 - (1). In general.
 - (2). What constitutes indebtedness.
- 55. Assumption of debts by grantee.

(E) INSOLVENCY OF GRANTOR.

- 56. Solvency of grantor.
- 57. — In general.
 - (1). In general.
 - (2). Liability as surety.
 - (3). Effect of transfer on solvency.

186. FRAUDULENT CONVEYANCES

I. TRANSFERS AND TRANSACTIONS INVALID.(Cont'd)

- (4). Subsequent insolvency.
- (5). Transactions between husband and wife.
- 58. — Retention of property sufficient to pay debts.
- 59. Security for debts of grantor.
- 60. Solvency of debtor liable primarily or jointly with grantor.
- 61. Insolvency element of fraud.
- 62. Inability to pay debts constituting insolvency.
- (F) INTENT OF GRANTOR.
- 63. Intent to defraud pre-existing creditors.
- 64. — In general.
 - (1). In general.
 - (2). Transactions between relatives, husband and wife, or parent and child.
- 65. — One or more creditors.
- 66. — Pending actions or other proceedings.
- 67. — Preventing sacrifice of property.
- 68. Intent to defraud subsequent creditors.
- 69. — In general.
 - (1). In general.
 - (2). Transactions between husband and wife or parent and child.
- 70. — Engaging in hazardous business.
- 71. Intent to defraud subsequent purchasers.
- 72. Good faith of grantor in conveyance procured by fraud of grantee.

(G) CONSIDERATION.

- 73. Want or insufficiency element of fraud.
- 73.1. — In general.
- 74. — As to creditors.
 - (1). In general.
 - (2). Inadequacy or insufficiency of consideration.
 - (3). Voluntary conveyances.
 - (4). Subsequent creditors.
- 75. — As to subsequent purchasers.
- 76. Nature and adequacy.
 - (1). In general.
 - (2). Valuable consideration.
 - (3). Fictitious consideration.
- 77. Sufficiency in general.

I. TRANSFERS AND TRANSACTIONS INVALID.(Cont'd)

- 78. Executory character in general.
- 79. Future services.
- 80. Future support.
- 81. Future advances.
- 82. Promissory notes, acceptances, and indorsements.
- 83. Security to indorser, surety, or guarantor.
- 84. Assumption of liability.
- 85. Pre-existing liability.
- 86. — In general.
- 87. — Payment or satisfaction.
 - (1). In general.
 - (2). Property in excess of debt.
 - (3). Satisfaction of trust.
- 88. — Security.
- 89. — Contingent liability.
- 90. — Invalidity of original transaction.
- 91. — Debt barred by limitation.
- 92. Moral obligation.
- 93. Natural affection in general.
- 94. Marriage and marriage settlements.
- 95. Transactions between husband and wife.
 - (5). In general.
 - (1). Want or insufficiency of consideration.
 - (2). Nature, source, and sufficiency of consideration in general.
 - (3). Conveyance to wife on consideration paid by husband.
 - (4). Release of wife's dower.
 - (5). Pre-existing liability.
 - (6). Payment of pre-existing debts.
 - (7). What constitutes indebtedness.
 - (8). Repayment of money loaned by wife.
 - (9). Payment of claims arising from husband's appropriation of wife's separate estate.
 - (10). Laches of wife in asserting claim, and debts barred by limitations.
 - (11). Postnuptial settlements.
- 96. Transactions between parent and child.
 - (5). In general.
 - (1). Want or insufficiency of consideration.
 - (2). Nature, source, and sufficiency of consideration in general.

186. FRAUDULENT CONVEYANCES

I. TRANSFERS AND TRANSACTIONS INVALID.(Cont'd)

- (3). Executory consideration.
- (4). Pre-existing liability.
- 97. Family settlements.
- 98. Failure of consideration.
- 99. Partial insufficiency or failure.
 - (1). In general.
 - (2). Transactions between husband and wife.
 - (3). Transactions between parent and child.
- 100. Partial invalidity or illegality.
 - (.5). In general.
 - (1). Consideration partly fictitious.
 - (2). Consideration usurious in part.
 - (3). Consideration illegal in part.

(H) CONFIDENTIAL RELATIONS OF PARTIES.

- 101. Element or evidence of fraud.
- 102. Family relation in general.
- 103. Husband and wife.
- 103.1. — In general.
- 104. — Transactions in general.
 - (.5). In general.
 - (1). Relation as element of fraud.
 - (2). Validity in general.
 - (3). Employment of husband as manager or agent for wife.
 - (4). Donation of husband's or children's services.
 - (5). Giving false credit to husband.
 - (6). Purchases by wife in general.
 - (7). Purchase of husband's property at private or public sale.
- 105. — Procuring conveyances from third persons.
- 106. — Making improvements on real property.
- 107. Parent and child.
- 108. Fiduciary and friendly relations.

(I) RESERVATIONS AND TRUSTS FOR GRANTOR.

- 109. Element or evidence of fraud.
- 110. Benefits reserved to grantor.
 - (1). In general.
 - (2). Employment of debtor.
 - (3). Purchase at execution sale for benefit of debtor.
 - (4). Support or care of grantor.

I. TRANSFERS AND TRANSACTIONS INVALID.(Cont'd)

- (5). Surplus or proceeds.
- (6). Reservation of life estate.
- 111. Conveyances in trust for grantor.
- 112. Reservation of power to revoke.
- 113. Secret reservations or trusts.
 - (.5). In general.
 - (1). As element or evidence of fraud.
 - (2). What constitutes secret reservation.
 - (3). Absolute conveyance intended as security.

(J) PREFERENCES TO CREDITORS.

- 114. Element or evidence of fraud.
- 115. Right of debtor to prefer creditor.
 - (1). In general.
 - (2). Secret preferences.
 - (3). Delegation of power to prefer.
- 116. Statutory provisions.
- 117. Intent to defeat other creditors.
- 118. Preference of husband, wife, or other relatives.
 - (1). In general.
 - (2). Husband and wife.
 - (3). Parent and child.
- 119. Confidential relations of parties.
- 120. Nature and form of transaction in general.
 - (1). In general.
 - (2). Judgment notes including attorney fees.
- 121. Payment or satisfaction of debts.
- 122. Mortgages and other transfers as security.
 - (1). In general.
 - (2). Mortgages.
 - (3). Pledge.
- 123. Confession of judgment.
- 124. Suffering judgment by default.
- 125. Suffering levy of attachment or execution.
- 126. Nature of debts preferred in general.
- 127. Preference of secured debts.
- 128. Preference of sureties.
- 129. Preference of invalid debt.
- 130. Effect of illegal preference.

186. FRAUDULENT CONVEYANCES

(K) RETENTION OF POSSESSION OR APPARENT TITLE BY GRANTOR.

- 131. Element or evidence of fraud.
- 131.1. — In general.
- 132. — As to creditors.
 - (1). In general.
 - (2). Property in possession of third person.
 - (3). Substitutes for change of possession.
- 133. — As to subsequent purchasers.
- 134. Statutory provisions.
- 134.1. — In general.
- 135. — Change of possession.
- 136. — Record or filing of written instrument.
- 137. Nature of property transferred.
 - (.5). In general.
 - (1). Personalty in general.
 - (2). Choses in action.
 - (3). Real estate.
 - (4). Growing crops.
- 138. Nature and form of transaction in general.
- 139. Absolute sales and conveyances.
- 140. Public or judicial sales.
- 141. Conditional sales.
- 142. Reservation of power of disposition or use.
- 143. Possession as lessee.
- 144. Possession as bailee.
- 145. Possession as agent or employee.
- 146. Possession by husband, wife or other relatives.
 - (1). In general.
 - (2). Husband and wife.
 - (3). Parent and child.
- 147. Sufficiency of transfer of possession.
- 147.1. — In general.
- 147.2. — Constructive or symbolic delivery.
- 147.3. — Acts of ownership.
- 147.4. — Transfers of property in possession of third person.
- 148. — Possibility of delivery.
 - (1). In general.
 - (2). Growing crops.
- 149. — Immediate delivery.
 - (1). In general.
 - (2). Change of possession before levy.

I. TRANSFERS AND TRANSACTIONS INVALID.(Cont'd)

- 150. — Actual and substantial change of possession.
 - 151. — Visible and notorious possession.
 - 152. — Exclusive or concurrent possession.
 - 153. — Continued change of possession.
 - 154. Failure to record or file instrument.
 - (1). In general.
 - (2). Substitutes for registration.
 - (3). Sufficiency of record.
 - (4). Withholding from record for benefit of debtor.
- ### (L) KNOWLEDGE AND INTENT OF GRANTEE.
- 155. Elements of fraud in general.
 - 156. Knowledge or actual notice.
 - (.5). In general.
 - (1). Necessity of actual notice or knowledge.
 - (2). What constitutes knowledge or actual notice in general.
 - 157. Knowledge or notice implied from relation between parties.
 - (1). In general.
 - (2). Husband and wife.
 - 158. Constructive notice, and facts putting on inquiry.
 - (.5). In general.
 - (1). What constitutes constructive notice.
 - (2). Facts putting on inquiry.
 - (3). Necessity of making inquiry.
 - 159. Operation and effect of knowledge or notice.
 - (1). In general.
 - (2). Knowledge or notice of indebtedness or insolvency of grantor.
 - (3). Knowledge or notice of pendency of suits.
 - (4). Preferred creditors.
 - 160. Payment of consideration after notice.
 - 161. Participation in fraudulent intent.
 - 162. — In general.
 - 162.1. — Necessity of participation in fraudulent intent.
 - 162.2. — What constitutes participation.
 - 163. — Operation and effect.
 - 164. Effect of good faith of grantee.
 - 165. — In general.

186. FRAUDULENT CONVEYANCES

I. TRANSFERS AND TRANSACTIONS INVALID.(Cont'd)

- 166. — Mortgagees and pledgees.
- 168. — Nature and amount of consideration.
- 169. — Voluntary conveyances.
- 170. — Confidential relations of parties.
- 171. — Preferred creditors.

II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS.

(A) ORIGINAL PARTIES.

- 172. Validity of transaction as between parties.
 - (1). In general.
 - (2). Right to impeach or rescind transaction as fraudulent.
 - (3). Conveyances induced by grantee.
- 173. Mutual rights and liabilities of parties.
- 173.1. — In general.
- 174. — Title and rights to property.
 - (1). In general.
 - (2). Title subsequently acquired.
 - (3). Right to recover property fraudulently conveyed.
 - (4). Enforcement of agreement to reconvey.
 - (5). Assertion of title after reconveyance.
 - (6). Right to redeem property transferred as security.
- 175. — Conveyance or transaction as satisfaction of liability.
- 176. — Enforcement of executory contract.
 - (1). In general.
 - (2). Fraudulent mortgage.
 - (3). Enforcement of trust for grantor.
- 177. — Payment and recovery of consideration.
- 178. — Expenditures, liabilities, and damages incurred.
- 179. Rights and liabilities as to third persons in general.
 - (1). In general.
 - (2). Creditors of grantee.
 - (3). Between creditors of grantor and creditors of grantee.
- 180. Rights and liabilities of grantees as to creditors.
- 180.1. — In general.

II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS.(Cont'd)

- 181. — Property and proceeds thereof.
 - (1). In general.
 - (2). Several fraudulent transactions.
 - (3). Right to growing crops.
 - (4). Proceeds of insurance on property conveyed.
 - (5). Application of proceeds to creditors' claims.
- 182. — Personal liabilities.
 - (1). In general.
 - (2). Extent of liability.
 - (3). Rents and profits.
 - (4). Liability as garnishee.
 - (5). Liability of grantee as trustee for creditors.
- 183. — Reimbursement of consideration and expenditures.
 - (.5). In general.
 - (1). Reimbursement of consideration.
 - (2). Care of property and expenses.
 - (3). Compensation for improvements.
 - (4). Security for consideration paid.
- 184. — Claims and liens acquired by grantee.
 - (1). In general.
 - (2). Interest.
 - (3). Title subsequently acquired by grantee.
 - (4). Purchase of judgment against grantor.
- 185. Rights of grantees as bona fide purchasers.
- 186. — In general.
- 187. — Nature and extent of consideration.
- 188. Actions.

(B) PURCHASERS FROM GRANTOR.

- 189. Subsequent purchasers in general.
- 191. Mortgagees and pledgees.
- 192. Bona fide purchasers.

(C) PURCHASERS FROM GRANTEE IN GENERAL.

- 193. Rights and liabilities as to original parties.
- 194. Rights and liabilities as to creditors of original grantor.

186. FRAUDULENT CONVEYANCES

II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS.(Cont'd)

195. Rights and liabilities as to purchasers from original grantor.

(D) BONA FIDE PURCHASERS FROM GRANTEE.

- 196. Subsequent purchasers in general.
- 197. Mortgagees and pledgees.
- 198. Good faith in general.
- 199. Notice.
- 200. Consideration.
- 201. Rights and liabilities.
- 201.1. — In general.
- 202. — As to original parties.
- 203. — As to creditors of original grantor.
- 204. — As to purchasers from original grantor.

III. REMEDIES OF CREDITORS AND PURCHASERS.

(A) PERSONS ENTITLED TO ASSERT INVALIDITY.

- 205. Necessity of prejudice.
- 206. Pre-existing creditors.
 - (1). In general.
 - (2). Who are pre-existing creditors.
- 207. Subsequent creditors.
- 208. — In general.
- 209. — Effect of fraud as to pre-existing creditors.
- 210. — Knowledge or notice of fraudulent transaction.
- 211. Assignees.
- 212. Nature of claims of creditors.
- 213. — In general.
- 214. — On contracts.
- 215. — For torts.
- 216. — On demands not liquidated.
- 217. — On demands not matured.
- 218. — On contingent liabilities.
- 219. General creditors.
- 220. Secured creditors.
- 221. Judgment creditors.
- 222. Attaching creditors and officers.
- 223. Creditors purchasing at execution sales.
- 224. Subsequent purchasers and incumbrancers.
- 225. Estoppel and waiver.

(B) REMEDIES ON GROUND OF NULLITY OF TRANSFER.

- 226. Application of property to claims of creditors in general.
- 227. Necessity of direct action.
- 228. Levy of attachment.
- 229. Garnishment.
- 230. Levy of execution.
- 231. Collateral attack on judgment or other proceeding as fraudulent.
- 232. Contest of claim to property levied on.
- 233. Establishment of lien as against grantees or others.
- 235. Accounting by grantee.

(C) RIGHT OF ACTION TO SET ASIDE TRANSFER, AND DEFENSES.

- 237. Nature and form of remedy.
 - (1). In general.
 - (2). Remedy by suit in equity.
 - (3). Intervention to contest judgment against debtor as fraudulent.
- 239. Existence of other remedy.
 - (.5). In general.
 - (1). Remedy at law in general.
 - (2). Resort to attachment, garnishment or execution.
- 240. Grounds of action in general.
- 241. Conditions precedent.
 - (1). In general.
 - (2). Necessity of judgment.
 - (3). Necessity of lien.
 - (4). Necessity of exhausting legal remedy in general.
 - (5). Execution and return.
- 242. Defenses.
 - (1). In general.
 - (2). Impachment of creditor's judgment or claim.
- 243. Pendency of other action or proceeding.
- 244. Abatement on death of party.

(D) JURISDICTION.

- 245. Jurisdiction of cause of action.
- 246. Jurisdiction of persons and property involved.

(E) VENUE.

- 247. In general.

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(F) TIME TO SUE.

- 248. Time to sue and limitations.
See also *LIMITATION OF ACTIONS*.
- 249. Laches.

(G) PARTIES.

- 250. Plaintiffs.
- 251. — In general.
- 252. — Suing in behalf of all creditors.
- 253. — Joinder.
- 254. Defendants.
- 255. — In general.
 - (1). In general.
 - (2). Claimants or persons interested in property.
 - (3). Grantor as defendant.
 - (4). Grantee as defendant.
- 256. — Joinder.
- 257. Intervention and change of parties.

(H) PLEADING.

- 258. Bill, complaint, or petition.
- 258.1. — In general.
- 259. — Form and requisites in general.
 - (1). In general.
 - (2). Right to sue.
- 260. — Indebtedness.
- 261. — Insolvency.
- 262. — Description of property.
- 263. — Fraudulent transaction.
 - (1). In general.
 - (2). Intent of grantor.
 - (3). Consideration.
 - (4). Knowledge and intent of grantee.
 - (5). Effect of transaction.
- 264. — Want or exhaustion of other remedy.
- 265. — Prayer for relief.
- 266. Plea or answer, and subsequent pleadings.
 - (1). In general.
 - (2). Denials and admissions.
 - (3). Disclaimer.
- 267. Pleading fraud as defense.
- 268. Amended and supplemental pleadings.
- 269. Issues and proof.
- 269.1. Variance.

(I) EVIDENCE.

- 270. Presumptions and burden of proof.
- 271. — In general.
 - 271.1. — Right to sue.
 - 271.2. — Burden of proof under pleadings.
 - 271.3. — Fraudulent character of transaction.
 - 271.4. — Rebuttal of presumptions.
- 272. — Insolvency.
- 273. — Intent of grantor in general.
- 274. — Intent to defraud subsequent creditors.
- 275. — Intent to defraud subsequent purchasers.
- 276. — Nature and circumstances of transaction in general.
- 277. — Consideration.
 - (1). In general.
 - (2). Transactions between relatives.
 - (3). Transactions between husband and wife.
- 278. — Relations between parties.
 - (.5). In general.
 - (1). Transactions between relatives.
 - (2). Transactions between husband and wife.
 - (3). Fiduciary relation.
- 279. — Reservations and trusts for grantor.
- 280. — Preferences to creditors.
- 281. — Retention of possession.
- 282. — Knowledge and intent of grantee.
- 283. — Good faith of purchasers.
- 284. — Effect of transaction.
- 285. Admissibility.
- 286. — In general.
 - (1). In general.
 - (2). Fraudulent instrument or conveyance.
 - (3). Pleadings as evidence.
 - (4). Prior or subsequent conduct of parties or persons interested.
 - (5). Separate conveyances or transactions.
 - (6). Reservations and trusts for grantor.
 - (7). Right to sue.
 - (8). Title or control of property.
- 287. — Indebtedness.
- 288. — Insolvency.

186. FRAUDULENT CONVEYANCES

III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- 289. — Intent of grantor.
 - (1). In general.
 - (2). Prior or subsequent conduct of parties or persons interested.
- 290. — Nature and circumstances of transaction.
- 291. — Consideration.
 - (1). In general.
 - (2). Pre-existing liability.
 - (3). Books of account.
 - (4). Ability of grantee to purchase.
 - (5). Value of property or interest conveyed.
- 292. — Knowledge and intent of grantee.
- 293. — Good faith of purchaser.
- 294. Weight and sufficiency.
- 295. — In general.
 - 295.1. — To show fraud.
 - 295.2. — Circumstantial evidence.
 - 295.3. — Subsequent conduct of grantor.
 - 295.4. — Right to sue.
- 296. — Indebtedness.
- 297. — Insolvency.
- 298. — Intent of grantor.
 - (5). In general.
 - (1). Intent to defraud pre-existing creditors.
 - (2). Transactions between relatives.
 - (3). Transactions between husband and wife.
 - (4). Intent to defraud subsequent creditors.
- 299. — Nature and circumstances of transaction.
 - (1). In general.
 - (2). Mortgages and other transfers as security.
 - (3). Mortgage or judicial sale.
 - (4). Preferences to creditors.
 - (5). Conducting business in name of another.
 - (6). Procuring conveyance in name of another.
 - (7). Collusive actions.
 - (8). Secret reservations or trusts.
 - (9). Retention or change of possession.

III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- (10). Fraudulent withholding of instrument from record.
- (11). Transactions between relatives in general.
- (12). Transactions between husband and wife.
- (13). Transactions between parent and child.
- 300. — Consideration.
 - (1). In general.
 - (2). Recitals in instrument or conveyance.
 - (3). Source of consideration.
 - (4). Pre-existing indebtedness.
 - (5). Pre-existing indebtedness sustaining transactions between husband and wife.
 - (6). Ability of grantee to purchase.
 - (7). Value of property conveyed.
 - (8). As to subsequent creditors or purchasers.
- 301. — Knowledge and intent of grantee.
 - (1). In general.
 - (2). Participation in fraudulent intent.
 - (3). Transactions between relatives.
 - (4). Transactions between husband and wife.
- 302. — Good faith of purchaser.
 - (J) DISCOVERY.
- 303. In general.
 - (K) INJUNCTION (OBSOLETE, SEE INJUNCTION §1232).
 - (L) RECEIVER.
- 305. In general.
 - (M) TRIAL.
- 306. In general.
- 307. Reference.
- 308. Questions for jury; questions of law and fact.
 - (1). In general.
 - (2). Nature and form of transaction.
 - (3). Insolvency.
 - (4). Consideration.
 - (5). Sufficiency of transfer of possession.

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III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- (6). Knowledge and intent of grantee.
- (7). Submission to jury as determined by existence of particular facts.
- (8). Relationship of parties.
- (9). Retention or change of possession.
- 309. Instructions.
 - (.5). In general.
 - (1). Form and sufficiency.
 - (2). Applicability of instructions.
 - (3). Construction.
 - (4). Intent of grantor.
 - (5). Nature and form of transaction.
 - (6). Indebtedness and insolvency.
 - (7). Consideration.
 - (8). Relationship of parties.
 - (9). Reservations and trusts for grantor.
 - (10). Preferences to creditors.
 - (11). Retention or change of possession by grantor.
 - (12). Knowledge and intent of grantee.
- 310. Verdict and findings.

(N) JUDGMENT OR DECREE.

- 311. Judgment or decree.
- 312. — In general.
 - (1). Requisites and validity in general.
 - (2). Mode and time of rendering.
 - (3). Relief in general.
- 313. — As to property transferred.
 - (.5). In general.
 - (1). Setting aside conveyance.
 - (2). Ordering sale of property.
- 314. — Personal judgment.
- 315. — Construction and operation.
 - (1). In general.
 - (2). Persons entitled to claim benefit.
 - (3). Lien.

(O) EXECUTION AND ENFORCEMENT.

- 316. In general.
- 317. Sales and conveyances under order of court.

(P) DISPOSITION OF PROPERTY OR PROCEEDS.

- 318. Subjection to claims of creditors in general.

III. REMEDIES OF CREDITORS AND PURCHASERS.(Cont'd)

- 319. Costs and expenses.
- 320. Mortgages and other liens.
- 321. Priorities of creditors.
 - (1). In general.
 - (2). Lien acquired by bringing suit.
- 322. Grantee or purchaser as creditor.
- 323. Application to judgment or execution.
- 324. Right to surplus.
- (Q) REVIEW.**
- 325. Presentation and reservation in lower court of grounds of review.
- 326. Taking and perfecting proceedings and effect thereof.
- 327. Scope and extent of review.
- 328. Determination and disposition of cause.

IV. CRIMINAL RESPONSIBILITY.

- 329. Offenses.
- 330. Penalties and actions therefor.
- 331. Criminal prosecutions.

187. GAME

SUBJECTS INCLUDED

Wild animals pursued for sport or profit
Regulations for their preservation
Nature and incidents of rights of taking game

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Animals in general, regulations relating to and offense of cruelty to animals, see ANIMALS

Indian gaming rights, see INDIANS X

Protection of wildlife, particularly endangered or threatened species, see ENVIRONMENTAL LAW

Sunday, hunting on, see SUNDAY

- 1. Right to take game and nature of property therein.
- 2. What is game.

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- 2.5. Game on public lands or waters.
- 3. Private rights of taking game.
- 3.5. Power to protect and regulate.
Injunctive relief, see INJUNCTION ¶1393.
- 4. Constitutional and statutory provisions.
- 5. Licenses.
- 6. Game wardens and other officers.
- 7. Offenses.
- 8. Penalties for violations of regulations.
- 9. Criminal prosecutions.
- 10. Searches and seizures.

188. GAMING AND LOTTERIES

SUBJECTS INCLUDED

- Wagers and other agreements to risk money or other property on the result of a contest or the happening of any uncertain event
- Schemes for distribution of prizes by lot or chance among purchasers of shares therein or chances to obtain a prize
- Constitutional and statutory prohibitions of gaming and lotteries
- Nature, requisites, validity, incidents, construction, operation and effect of gaming and lottery agreements in general
- Rights, liabilities and remedies of the parties to wagers or lottery owners or managers, and of purchasers or holders of lottery shares, tickets, or chances
- Unlawful gaming, keeping or frequenting houses or other places for gaming, or conducting or advertising lotteries, as public offenses, and liability therefor, civil and criminal
- Licensing and regulation of gaming
- Grants and operation of lottery franchises and privileges
- Management and regulation of lotteries, whether conducted under lottery franchises or directly by the government

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Indian gaming, see INDIANS IX
- Insurance, wager policies of, see INSURANCE

Mailing matter concerning lotteries, see POSTAL SERVICE

Sunday, gambling on, see SUNDAY

- I. IN GENERAL, ¶200–269.
- II. RIGHTS AND REMEDIES OF PARTIES, ¶270–299.
- III. LICENSES AND REGULATION, ¶300–349.
- IV. PENALTIES, ¶350–359.
- V. SEARCHES AND SEIZURE, ¶360–364.
- VI. FORFEITURES, ¶365–379.
- VII. CRIMINAL PROSECUTIONS, ¶380–404.

I. IN GENERAL.

- 200. In general.
- 201. What law governs.
- 202. Constitutional, statutory, and regulatory provisions.
- 203. — In general.
- 204. — Purpose in general.
- 205. — Construction and operation in general.
 - (1). In general.
 - (2). Liberal or strict construction.
 - (3). Remedial or penal construction.
- 206. — Validity.
 - (1). In general.
 - (2). Horse and dog racing; pari-mutuel betting.
 - (3). Lotteries, raffles, and bingo.
 - (4). Securities, futures, negotiable instruments.
 - (5). Trading stamps.
 - (6). Allowing recovery of winnings or money wagered.
 - (7). Gambling devices.
 - (8). Casinos.
 - (9). Operating or allowing a gaming house, place, or business.
 - (10). Penalties and forfeitures.
- 207. — Retroactive or prospective operation.
- 208. — Repeal or modification.
- 209. Proscription against gaming and lotteries in general.
- 210. Void or voidable nature.
- 211. Public policy.
- 212. Right to gamble.

188. GAMING AND LOTTERIES

I. IN GENERAL.(Cont'd)

- 213. Nature and elements of gaming.
- 214. — In general.
- 215. — Amount at stake; consideration.
- 216. — Form; terms or labels used by parties.
- 217. — Intent.
- 218. — Game, event, or hazard in general.
- 219. — Skill or chance in general.
- 220. — Distribution of property by chance.
- 221. — Prize.
- 222. Promoting gambling.
- 223. Collateral agreements; loans and credit.
- 224. Speculative transactions and dealings.
- 225. — In general.
- 226. — Security.
- 227. — Bills, notes, sales.
- 228. — Investments; futures and options; bets on rise or fall of prices.
- 229. — Hedging.
- 230. — Settling differences.
- 231. Trading stamps.
- 232. Lotteries and raffles.
- 233. Bingo.
- 234. Games, sports, contests in general.
- 235. Horse and dog racing; pari-mutuel betting.
- 236. Elections.
- 237. Dice.
- 238. Cards.
- 239. Slot and pinball machines.
- 240. Video games.
- 241. Stakeholding.
- 242. Records.
- 243. Bookmaking or pool selling.
- 244. Activity in a public place.
- 245. Operating an illegal gambling business.
- 246. — In general.
- 247. — Number of violators; size of business.
- 248. Travel Act.
- 249. Criminal gambling promotion.
- 250. Keeping a place of gaming.
- 251. Owning, permitting, or letting use of property for gaming.
- 252. Devices and equipment.
- 253. — In general.
- 254. — Manufacturing.
- 255. — Possession, keeping, or exhibiting.

I. IN GENERAL.(Cont'd)

- (1). In general.
- (2). Sale or offer to sell.
- (3). Transporting across state lines.
- 256. Frequenting gambling place.
- 257. Common or professional gambler status.
- 258. Use of telecommunication devices.
- 259. Defenses.
- 260. — In general.
- 261. — License.
- 262. Persons liable.

II. RIGHTS AND REMEDIES OF PARTIES.

- 270. In general.
- 271. What law governs.
- 272. Parties to bet or game.
- 273. — In general.
- 274. — Withdrawal or repudiation of wager or contract.
- 275. — Recovery of property wagered or lost.
 - (1). In general.
 - (2). Persons entitled to recover.
 - (3). Persons liable and extent of liability.
 - (4). Particular contexts.
 - (5). — In general.
 - (6). — Election wagers.
 - (7). — Lotteries.
 - (8). — Bingo.
 - (9). — Sporting events.
 - (10). — Horse and dog racing; pari-mutuel betting.
 - (11). — Speculative transactions and commodities contracts.
 - (12). Defenses.
 - (13). Amount of recovery.
- 276. — Right to recover winnings under contract.
 - (1). In general.
 - (2). Unlawful contracts and transactions in general.
 - (3). Particular contexts.
 - (4). — In general.
 - (5). — Election wagers.
 - (6). — Lotteries in general.
 - (7). — Lottery claims and tickets; determination of outcome.

188. GAMING AND LOTTERIES

II. RIGHTS AND REMEDIES OF PARTIES.(Cont'd)

- (8). — Parties entitled to claim lottery winnings; assignments.
- (9). — Bingo.
- (10). — Sporting events.
- (11). — Horse and dog racing; pari-mutuel betting.
- (12). Speculative transactions and commodities contracts.
- (13). Defenses.
- (14). Amount of recovery.
- 277. — Rights of licensed entity.
- 278. Stakeholders.
- 279. Agents for purpose of betting or gambling.
- 282. Summary remedies.
- 283. Actions.
- 284. — In general.
- 285. — Nature and form of remedy.
- 286. — Conditions precedent and exhaustion of remedies.
- 287. — Jurisdiction and venue.
- 288. — Time to sue and limitations.
- 289. — Parties.
- 290. — Process.
- 291. — Pleading.
- 292. — Evidence.
- 293. — Trial.
- 294. — Judgment.
- 295. — Review.

III. LICENSES AND REGULATION.

- 300. In general.
- 301. What law governs.
- 302. Boards, agencies, and regulatory personnel.
- 303. — In general.
- 304. — Racing boards.
- 305. — Gaming commissions and boards.
- 306. — Judicial review in general.
- 307. Eligibility for, right to, or necessity of license.
- 308. — In general.
- 309. — Casinos and gaming establishments.
- (1). In general.
- (2). Personnel issues.
- 310. — Bingo.

III. LICENSES AND REGULATION.(Cont'd)

- 311. — Horse and dog racing; pari-mutuel betting.
- 312. Proceedings to obtain license.
- 313. — In general.
- 314. — Judicial review.
- 315. Regulation of licensed entities.
- 316. — In general.
- 317. — Bingo in general.
- 318. — Charitable activity.
- 319. — Casinos and gaming establishments.
- (1). In general.
- (2). Personnel.
- (3). Restrictions on who may enter or participate.
- 320. — Horse and dog racing; pari-mutuel betting.
- 321. — Proceedings.
- 322. Taxes and fees.
- 323. — In general.
- 324. — Bingo in general.
- 325. — Charitable activity.
- 326. — Casinos.
- 327. — Horse and dog racing; pari-mutuel betting.
- 328. — Video games.
- 329. Rights and liabilities of licensed entities in enforcing and complying with regulations.
- 330. — In general.
- 331. — Exclusion or removal of patrons.
- 332. Discipline, fines, and penalties; suspension.
- 333. — In general.
- 334. — Casinos.
- 335. — Proceedings.
- 336. Revocation or termination.
- 337. — In general.
- 338. — Proceedings.
- 339. Renewal.
- 340. — In general.
- 341. — Proceedings.
- 342. Reinstatement.
- 343. — In general.
- 344. — Proceedings.

IV. PENALTIES.

- 350. In general.

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IV. PENALTIES.(Cont'd)

- 351. Grounds of penalties.
- 352. Amount of penalties.
- 353. Persons who may enforce penalties.
- 354. Persons liable for penalties.
- 355. Proceedings to recover penalties.

V. SEARCHES AND SEIZURE.

- 360. In general.

VI. FORFEITURES.

- 365. In general.
- 366. Property subject to forfeiture.
- 367. Grounds of forfeitures.
- 368. Enforcement and effect of forfeitures.

VII. CRIMINAL PROSECUTIONS.

- 380. In general.
- 381. Indictment and information.
- 382. Evidence.
- 383. — In general.
- 384. — Presumptions and burden of proof.
- 385. — Admissibility.
- 386. — Weight and sufficiency.
 - (1). In general.
 - (2). Lotteries, raffles, and bingo.
 - (3). Horse and dog racing; pari-mutuel betting.
 - (4). Cards and dice.
 - (5). Slot machines.
 - (6). Gaming in a public place.
 - (7). Promotion of gambling.
 - (8). Common or professional gambler status.
 - (9). Bookmaking and paraphernalia associated therewith.
 - (10). Illegal gambling business.
 - (11). Travel Act.
 - (12). Use of telecommunication devices.
 - (13). Keeping or permitting place of gaming.
 - (14). Devices and equipment.
- 387. Instructions.
- 388. Questions of law or fact.
- 389. — In general.
- 390. — Lotteries, raffles, and bingo.
- 391. — Horse and dog racing; pari-mutuel betting.

VII. CRIMINAL PROSECUTIONS.(Cont'd)

- 392. — Cards and dice.
- 393. — Slot machines.
- 394. — Gaming in a public place.
- 395. — Promotion of gambling.
- 396. — Common or professional gambler status.
- 397. — Bookmaking and paraphernalia associated therewith.
- 398. — Illegal gambling business.
- 399. — Travel Act.
- 400. — Use of telecommunication devices to.
- 401. — Keeping or permitting place of gaming.
- 402. — Devices and equipment.
- 403. Verdict and findings.
- 404. Sentence and punishment.

190. GAS

SUBJECTS INCLUDED

Regulation of the production, supply and use of gas for illuminating, heating and like purposes, obtained either from natural sources or by any process of manufacture, whether under franchises granted therefor or directly by municipalities

Rights, powers, duties and liabilities of gas companies and of municipal corporations in respect of the supply of gas

Gas pipelines, mains and appliances

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations generally, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, exercise of power, see EMINENT DOMAIN

Innkeepers' and landlords' liabilities for escape or explosion of gas, see INNKEEPERS, LANDLORD AND TENANT

Municipalities' powers to grant and regulate franchises and to make contracts with gas

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companies, see MUNICIPAL CORPORATIONS

Natural gas wells, landowners' and lessees' rights and liabilities, and regulation of production and disposition of gas at the well, see MINES AND MINERALS

Oil pipelines, see CARRIERS, EASEMENTS

Severance taxes, see MINES AND MINERALS

Taxation of gas companies, see TAXATION

1. Power to control and regulate.
2. Statutory and municipal regulation in general.
3. Establishment or acquisition of plant by public authorities.
4. Gas companies.
 - 4.1. — In general.
5. — Incorporation and organization.
6. — Franchises, privileges, and powers in general.
7. — Rights in streets and other public places.
 - (1). In general.
 - (2). Making, requisites, and validity of grant or license.
8. — Indebtedness, liens, and mortgages.
9. Mains, pipes, and appliances.
10. Licenses and taxes.
11. Inspection.
12. Supply to municipalities.
13. Supply to private consumers.

See also SALES.

 - (1). In general.
 - (2). Rules and regulations.
 - (3). Duty to supply gas.
 - (4). Duty to furnish meters.
 - (5). Control and regulation of meters.
 - (6). Right to shut off supply.
14. Charges.
 - 14.1. — In general.
 - (1). In general; amount and regulation.
 - (2). Uniformity of charges; discrimination.
 - (3). Contracts.
 - (4). Service charges.
 - (5). Rent of meters.
 - 14.2. — Municipal regulation.
 - 14.3. — Administrative regulation.

- (1). In general.
 - (2). Federal Power Commission.
 - (3). Proceedings in general.
 - (4). Findings and orders.
- 14.4. — Reasonableness of charges.
 - (1). In general.
 - (2). Elements considered in general.
 - (3). Determination of rate base in general.
 - (4). Method of valuation.
 - (5). Property included.
 - (6). Good will and going value.
 - (7). Operating expenses in general.
 - (8). Payments for gas by distributing companies.
 - (9). Depreciation and depletion.
 - (10). Earnings and reasonableness of return.
 - (11). Allocation of items to areas or types of business.
 - (12). Evidence.
- 14.5. — Judicial review and enforcement of regulations.
 - (1). In general.
 - (2). Injunction.
 - (3). Decisions reviewable.
 - (4). Persons entitled to relief; parties.
 - (5). Preliminary relief; supersedeas or stay.
 - (6). Scope of review and trial de novo.
 - (7). Presumptions.
 - (8). Questions of fact and findings.
 - (9). Determination and disposition.
 - (10). Distribution of impounded funds.
- 14.6. — Payment, collection, and recovery back.
- 14.50. Injuries incident to construction or operation of works in general.
15. Injuries from escape or explosion of gas.
 - 15.1. — In general.
16. — Nature and grounds of liability.
17. — Care required in general.
18. — Defects, acts or omissions causing injury.
19. — Contributory negligence.
20. — Actions.
 - (.5). In general.
 - (1). Pleading.
 - (2). Evidence.
 - (3). Damages.

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(4). Questions for jury.

(5). Instructions.

(6). Verdict and findings.

21. Injuries to works, mains, pipes, or appliances.

22. Penalties for violations of regulations.

23. Offenses incident to production, supply, or use.

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SUBJECTS INCLUDED

Voluntary transfers of property without consideration, whether executed or to take effect on the death of the giver

Acceptance and revocation thereof

Nature, requisites, validity, incidents, operation and effect of such transfers

Evidence relating thereto

Rights and liabilities of parties thereto as between themselves and as to others in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Creditors' and subsequent purchasers' rights, effect of want of consideration, see FRAUDULENT CONVEYANCES

Deeds of gift, see DEEDS

Particular personal or confidential relations, effect of, see ATTORNEY AND CLIENT, EXECUTORS AND ADMINISTRATORS, MARRIAGE AND COHABITATION, PARENT AND CHILD

Taxation of gifts, see INTERNAL REVENUE, TAXATION

I. INTER VIVOS, ¶1-52.

II. CAUSA MORTIS, ¶53-85.

I. INTER VIVOS.

1. Nature of gift in general.

2. What law governs.

3. Statutory provisions.

4. Requisites in general.

I. INTER VIVOS.(Cont'd)

5. Gifts distinguished from other transactions.

(1). In general.

(2). Gift or sale.

(3). Gift or transfer in trust.

6. Power to make gift.

7. Property which may be subject of gift.

7.1. — In general.

8. — Real property and interests therein.

9. — Personal property in general.

10. — Rights of action.

11. Time of taking effect.

12. Parties.

12.1. — In general.

13. — Capacity to make gift.

14. — Capacity to take.

15. Intent.

16. Necessity for execution.

17. Delivery.

17.1. — In general.

18. — Necessity.

(1). In general.

(2). Necessity of surrendering control.

19. — Actual delivery to donee.

(1). In general.

(2). Delivery to donee residing with donor.

20. — Property in possession of donee.

21. — To third person for donee.

22. — Constructive delivery.

23. — Retention of possession by donor for donee.

24. Acceptance in general.

25. Parol gift of land.

26. Necessity of notarial or public act.

27. Gift of legacy or distributive share of estate.

28. Gifts of rights of action in general.

(1). In general.

(2). Securities in general.

(3). Insurance policy.

29. Gifts of corporate stock.

30. Gifts of deposits in bank.

(1). In general.

(2). Deposit in donee's name or in trust for donee.

(3). Delivery of certificate or bank book.

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I. INTER VIVOS.(Cont'd)

- (4). Deposit in names of donor and donee.
- (5). Revocation.
- 31. Gifts of negotiable instruments.
 - (1). In general.
 - (2). Necessity of written assignment.
 - (3). Delivery to third person for donee.
 - (4). Revocation.
- 32. Gifts of donor's note or check.
 - (1). In general.
 - (2). Revocation.
- 33. Forgiveness of debt of donee.
 - (1). In general.
 - (2). Gift as affected by delivery of obligation to donee.
- 34. Qualified or conditional gifts.
- 35. Validity.
- 36. — In general.
- 37. — Mistake and misrepresentation.
- 38. — Fraud, duress, and undue influence.
- 39. — Illegality.
- 40. Ratification.
- 41. Revocation and rescission.
- 42. Operation and effect.
 - 42.1. — In general.
- 43. — As to parties.
- 44. — As to bona fide purchasers.
- 45. Pleading.
- 46. Evidence.
 - 46.1. — In general.
- 47. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Delivery and acceptance.
 - (3). Validity.
- 48. — Admissibility.
- 49. — Weight and sufficiency.
 - (1). In general.
 - (2). Validity.
 - (3). Delivery and acceptance.
 - (4). Gift of land in general.
 - (5). Gift of money or bank deposits in general.
 - (6). Gift of notes or securities in general.
- 50. Questions for jury.
- 51. Instructions.
- 52. Verdict and findings.

II. CAUSA MORTIS.

- 53. Requisites in general.
- 53.5. What law governs.
- 54. Gifts causa mortis distinguished from other transactions.
 - 54.1. — In general.
- 55. — Gifts inter vivos.
- 56. Property which may be subject of gift.
- 57. Time of taking effect.
- 58. Parties.
- 59. Expectation of death.
- 60. Intent.
- 61. Necessity for execution.
- 62. Delivery.
 - (5). In general.
 - (1). Necessity of delivery.
 - (2). Sufficiency of delivery in general.
 - (3). Delivery after death.
 - (4). Property in possession of donee.
 - (5). To third person for donee and property in possession of third person.
 - (6). Constructive delivery.
- 63. Acceptance in general.
- 64. Gifts of rights of action in general.
 - (1). In general.
 - (2). Negotiable instruments and securities.
- 65. Gifts of corporate stock.
- 66. Gifts of deposits in bank.
 - (1). In general.
 - (2). Delivery of bank book or certificate.
 - (3). Deposit jointly for donor and donee.
- 67. Gifts of donor's promissory note or check.
- 68. Forgiveness of debt of donee.
- 69. Particular qualifications or conditions.
- 70. Validity.
 - 71. — In general.
 - 72. — Mistake.
- 74. Revocation and rescission.
 - 74.1. — In general.
- 75. — Survival of donor.
- 76. — Agreement or act of parties.
- 77. Operation and effect.
- 78. Pleading.
- 79. Evidence.

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II. CAUSA MORTIS.(Cont'd)

- 79.1. — In general.
- 80. — Presumptions and burden of proof.
- 81. — Admissibility.
- 82. — Weight and sufficiency.
 - (1). In general.
 - (2). Sufficiency to support finding.
- 83. Questions for jury.
- 84. Instructions.
- 85. Verdict and findings.

192. GOOD WILL

SUBJECTS INCLUDED

Nature and incidents of rights of property in the custom or patronage of an established business or trade in general

Sales and other contracts relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contracts in restraint of trade for protection of good will and enforcement thereof by injunction, see **CONTRACTS, INJUNCTION**

Partners' rights in respect of good will of the firm business, see **PARTNERSHIP**

- 1. Nature of property.
- 2. Elements and incidents.
- 3. Ownership in general.
- 4. Sale or other transfer.
- 4.1. — In general.
- 5. — Requisites and validity.
- 6. — Rights and liabilities of parties.
 - (1). In general.
 - (2). Breach of contract of sale.
 - (2.1). — In general.
 - (3). — Use of name.
 - (4). — Resumption of business by vendor.
- 7. Actions.

193. GRAND JURY

SUBJECTS INCLUDED

Bodies of persons sworn to inquire into and make presentment of public offenses

Nature and constitution of such juries

Qualifications, selection, summoning and compensation of grand jurors

Challenges and objections

Organization, powers and duties, and general conduct of business of grand juries

Secrecy as to their proceedings

Liabilities of grand jurors for misconduct, etc., and liabilities of others for interference with grand juries

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Indictments and presentments, necessity, finding, filing and requisites, including sufficiency of evidence to support them, see **INDICTMENT AND INFORMATION**

Juries in general, matters relating to, see **JURY**

One-man grand jury and similar procedure, see **CRIMINAL LAW**

Witnesses' privilege against self-incrimination, see **WITNESSES, CRIMINAL LAW**

- 1. Nature and functions in general.
- 2. Constitutional and statutory provisions.
- 2.5. Constitution in general; representation of community.
- 3. Number of jurors.
- 4. Apportionment of jurors.
- 5. Qualifications of jurors.
- 6. Exemptions from service.
- 7. Authority to select and summon jurors.
- 8. Selection of jurors.
- 9. Summoning jurors in general.
- 10. Special venire or special grand jury.
- 11. Excusing and discharging jurors.
- 12. Summoning talesmen.
- 13. Attendance of jurors.
- 14. Compensation of jurors.
- 15. Competency of jurors.
- 16. Quashing venire.
- 17. Challenge to panel.
- 18. Challenges to individual jurors.
- 19. Waiver of objections to jurors.

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- 20. Impaneling and organization in general.
- 21. Appointment of foreperson.
- 22. Oath.
- 23. Charge.
- 24. Powers and duties.
- 25. — In general.
- 26. — Offenses and accusations.
- 27. — Public officers and institutions.
- 28. Term of service and sessions.
- 29. — In general.
- 30. — Term of court.
- 31. — Adjournments.
- 32. Attendance of officer.
- 33. Conduct of proceedings in general.
- 34. Participation of prosecuting attorney, attorney general, or special attorney.
- 35. Presence of accused or counsel.
- 36. Witnesses and evidence.
 - 36.1. — In general; obligation to testify.
 - 36.2. — Witnesses and evidence subject to compulsion; relevancy and materiality.
 - 36.3. — Grounds for refusal to appear, testify, or produce evidence.
 - (1). In general.
 - (2). Privilege.
 - (3). Relation of inquiry to illegally-obtained evidence.
 - 36.4. — Compelling testimony or production; subpoenas and orders.
 - (1). In general.
 - (2). Indefiniteness or overbreadth; motive and purpose.
 - 36.5. — Contempt.
 - (1). In general.
 - (2). Punishment; purging contempt.
 - 36.6. — Examination in general.
 - 36.7. — Warnings, advice, or disclosure to witness.
 - 36.8. — Scope of proof; admissibility.
 - 36.9. — Objections and determination thereof.
 - (1). In general.
 - (2). Evidence, affidavits, or other showing.
- 37. Examination of accused.
- 38. Presence and use of stenographers.
- 39. Presence or participation of unauthorized persons.
- 40. Minutes or record of proceedings.
- 41. Secrecy as to proceedings.
 - Excludes impeachment of witnesses, see WITNESSES ¶379(9), and disclosure of grand jury materials in criminal prosecutions, see CRIMINAL LAW ¶627.9.*
 - 41.10. — In general.
 - 41.20. — Persons subject to secrecy requirements; oath.
 - 41.30. — Matters subject to secrecy requirements.
 - 41.40. — Prevention of unauthorized disclosure.
 - 41.50. — Permitting disclosure.
 - (1). In general; discretion.
 - (2). Matters which may be disclosed.
 - (3). Persons to whom disclosure may be made.
 - (4). Grounds or objections in general.
 - (5). Necessity; use in or connection with judicial proceeding.
 - (6). Civil proceedings.
 - (7). Administrative or legislative proceedings; tax investigations.
 - (8). End of grand jury session; return of indictment.
 - (9). Showing irregularity of grand jury proceeding; impeaching indictment.
 - (10). Proceedings for disclosure.
 - 41.60. — Violation of secrecy requirements.
 - (1). In general; contempt.
 - (2). Evidence.
- 42. Presentments or reports to court in general.
- 43. Liabilities of jurors.
- 44. Liabilities for interference with grand jury.

195. GUARANTY

SUBJECTS INCLUDED

Collateral promises to answer for the payment of a debt or performance of the duty or contract or other obligation by another, liable therefor in the first instance, in the

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event of his failure to pay or perform the same

Nature, requisites, validity, incidents, construction, operation and effect of such promises in general

Rights, liabilities and remedies of guarantors, principal debtors and creditors

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Frauds, statute of, requirements, see FRAUDS, STATUTE OF

Indemnity contracts, see INDEMNITY

Particular classes of persons, guaranties by, see INFANTS, MENTAL HEALTH, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP and other specific topics

Suretyship contracts, see PRINCIPAL AND SURETY

I. REQUISITES AND VALIDITY, ¶1-26.

II. CONSTRUCTION AND OPERATION, ¶27-47.

III. DISCHARGE OF GUARANTOR, ¶48-74.

IV. REMEDIES OF CREDITORS, ¶75-96.

V. RIGHTS AND REMEDIES OF GUARANTOR, ¶97-107.

I. REQUISITES AND VALIDITY.

1. Nature of obligation.
2. What law governs.
3. Express and implied guaranties.
4. Guaranty distinguished from other contracts.
5. Validity of obligation of principal.
6. Offer and acceptance in general.
7. Notice of acceptance.
 - (.5). In general.
 - (1). Necessity for notice in general.
 - (2). Notice or knowledge of acceptance.
 - (3). Guaranty given for a consideration.
 - (4). Sufficiency.
8. Written guaranties.
 - 8.1. — In general.
9. — Form and contents.
10. — Execution in general.

I. REQUISITES AND VALIDITY.(Cont'd)

11. — Conditional signature.
12. — Delivery.
13. Consideration.
 - 13.1. — In general.
14. — Necessity.
15. — Effect of writing or seal.
16. — Sufficiency.
 - (1). In general.
 - (2). Consideration of principal contract in general.
 - (3). Guaranty made after principal contract.
 - (4). Forbearance.
17. — Failure of consideration.
18. Validity of assent in general.
19. Mistake.
20. Fraud, duress, and undue influence.
21. Estoppel or waiver as to defects or objections.
22. Ratification.
23. Modification.
24. Revocation.
 - (1). In general.
 - (2). Death of guarantor.
25. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
26. Questions for jury.

II. CONSTRUCTION AND OPERATION.

27. General rules of construction.
28. What law governs.
29. Parties.
30. — In general.
31. — Joint or several.
32. Negotiability and transfer of guaranty.
33. Nature of liability.
34. — In general.
35. — Guaranty of negotiable instruments.
36. Scope and extent of liability.
 - (1). In general.
 - (2). Guaranties of loans and payment of indebtedness in general.
 - (3). Guaranties of bills and notes.

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II. CONSTRUCTION AND OPERATION.(Cont'd)

- (4). Guaranties of investments in general.
- (5). Guaranties of sales and credits.
- (6). Guaranties of mortgages and judgments.
- (7). Guaranties of building contracts.
- (8). Guaranties of leases.
- (9). Guaranties as covering costs and expenses.
- 37. Commencement and duration in general.
- 38. Continuing guaranty.
 - (1). In general.
 - (2). Sales and credits.
 - (3). Loans and discounts.
- 39. Notice to guarantor of transactions under guaranty.
- 40. Limitation as to amount.
- 41. Interest.
- 42. Conditions.
 - (1). In general.
 - (2). Limitation as to amount.
- 43. Performance of contract or conditions by creditor.
- 44. Default of principal.
- 45. Demand on principal.
- 46. Notice of default to guarantor.
 - (1). In general.
 - (2). Sufficiency.
- 47. Time of accrual of liability.

III. DISCHARGE OF GUARANTOR.

- 48. Provisions of contract of guaranty in general.
- 49. Subsequent release or agreement.
- 50. Operation of law in general.
- 51. Death of principal.
- 52. Death of guarantor.
- 53. Change in obligation or duty of principal.
 - (1). In general.
 - (2). Assignment of original contract.
 - (3). Change in quantity or price.
- 54. Alteration of instrument.
- 55. Extension of time for payment or other performance.
- 56. — In general.
- 57. — Consideration.
- 58. Payment or other satisfaction by principal.
- 59. — In general.

III. DISCHARGE OF GUARANTOR.(Cont'd)

- 60. — Application of payments.
- 60.5. Misapplication of funds or securities.
- 61. Taking additional security.
- 62. Release or loss of other securities.
- 63. Release of coguarantor.
- 64. Discharge of principal without payment or satisfaction.
- 66. Negligence of creditor in general.
- 67. Neglect to give notice of default to guarantor.
- 68. Premature action on original obligation.
- 69. Neglect to act or proceed against principal.
- 70. — In general.
- 71. — After request of guarantor.
- 72. Waiver or estoppel of guarantor.
- 73. New promise after discharge.
- 74. Payment or other satisfaction by guarantor.

IV. REMEDIES OF CREDITORS.

- 75. Nature and form.
- 76. Rights of action.
- 77. Conditions precedent.
 - (1). In general.
 - (2). Proceedings against principal.
 - (3). Applying other security.
- 78. Defenses.
 - (1). In general.
 - (2). Set-off.
- 79. Conclusiveness of former adjudication in action against principal.
- 79.5. Recourse to indemnity to guarantor from principal.
- 80. Jurisdiction and venue.
- 81. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 82. Parties.
 - (.5). In general.
 - (1). Persons who may sue.
 - (2). Parties who must be sued.
 - (3). Joinder.
- 83. Pleading.
- 83.1. — In general.
- 84. — Mode and form in general.
- 85. — Declaration, complaint, or petition.
 - (1). In general.
 - (2). Pleading acceptance and notice.

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IV. REMEDIES OF CREDITORS.(Cont'd)

- 86. — Plea or answer and subsequent pleadings.
- 87. — Issues, proof, and variance.
- 88. Evidence.
 - 88.1. — In general.
- 89. — Presumptions and burden of proof.
- 90. — Admissibility.
- 91. — Weight and sufficiency.
- 92. Trial.
 - (1). In general.
 - (2). Instructions.
- 93. New trial.
- 94. Judgment.
- 95. Execution.
- 96. Appeal and error.

V. RIGHTS AND REMEDIES OF GUARANTOR.

- 97. As to creditor.
- 98. As to principal.
- 99. — In general.
- 100. — Indemnity or reimbursement.
- 101. — Enforcement against principal of judgment against guarantor.
- 102. — Actions against principal.
- 103. As to coguarantor.
- 104. — In general.
- 105. — Contribution.
- 106. — Actions between guarantors.
- 107. As to third persons.

196. GUARDIAN AND WARD

SUBJECTS INCLUDED

General guardianship, particularly of the persons and estates of infants, by nature or under parental or judicial appointment

Rights, powers, duties, and liabilities of guardians in respect of the persons and property of their wards

Legal proceedings relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Guardians ad litem and special guardians, see INFANTS, MENTAL HEALTH and other specific topics

Infants and their property, matters irrespective of guardianship, see INFANTS

Insane or otherwise incompetent persons, guardianship of, see CHEMICAL DEPENDENTS, MENTAL HEALTH, SPENDTHRIFTS

I. GUARDIANSHIP IN GENERAL, ¶1-7.

II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN, ¶8-27.

III. CUSTODY AND CARE OF WARD'S PERSON AND ESTATE, ¶28-74.

IV. SALES AND CONVEYANCES UNDER ORDER OF COURT, ¶75-115.

V. ACTIONS, ¶116-136.

VI. ACCOUNTING AND SETTLEMENT, ¶137-165.

VII. FOREIGN AND ANCILLARY GUARDIANSHIP, ¶166-172.

VIII. LIABILITIES ON GUARDIANSHIP BONDS, ¶173-182.

I. GUARDIANSHIP IN GENERAL.

- 1. The relation in general.
- 2. Power to control guardianship.
- 3. What law governs.
- 4. Guardians by nature.
- 5. Guardians in socage.
- 6. Volunteer and de facto guardians.
- 7. Estoppel to deny guardianship.

II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN.

- 8. Jurisdiction of courts.
- 9. Family meetings.
- 9.5. Persons for whom guardians may be appointed.
- 10. Persons who may be appointed.
- 11. Appointment by deed or will.
- 12. Appointment of undertutor.
- 13. Proceedings for judicial appointment.
 - (1). In general.
 - (2). Inventory.
 - (3). Application, parties, and notice.
 - (4). Evidence.

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II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN.(Cont'd)

- (5). Discontinuance.
- (6). Temporary guardian.
- (7). Findings and order.
- (8). Review.
- 14. Acceptance and oath of office.
- 15. Bond.
- 16. Issuance of letters.
- 17. Operation and effect of appointment.
- 18. Revocation of appointment.
- 19. Election of new guardian by ward.
- 20. Majority of ward.
- 21. Marriage of ward.
- 22. Death of ward.
- 23. Resignation and discharge.
- 24. Disqualification.
- 25. Removal.
- 26. Death of guardian.
- 27. Appointment of successor.

III. CUSTODY AND CARE OF WARD'S PERSON AND ESTATE.

- 28. Representation of ward by guardian.
- 29. Custody and control of person.
- 30. Support and education.
 - (1). In general.
 - (2). Support by parents.
 - (3). Previous authority of court or family meeting.
- 31. Services and earnings.
- 32. Appraisal and inventory of estate.
- 33. Collection of assets.
- 34. Title to property in general.
- 35. Possession and use of property.
- 36. Management of estate.
- 37. — In general.
- 38. — Real property and interests therein.
- 39. — Personal property.
- 40. Sale.
 - 41. — In general.
 - 42. — Real property.
 - 43. — Personal property.
- 44. Lease.
- 45. Mortgage or pledge.
- 46. Indorsement and transfer of bills and notes.
- 47. Contracts.
- 48. — In general.

III. CUSTODY AND CARE OF WARD'S PERSON AND ESTATE.(Cont'd)

- 49. — Services.
- 50. — Borrowing money.
- 51. — Bills and notes.
- 52. — Guaranty or suretyship.
- 53. Investments.
- 54. Interest on funds of estate.
- 55. Deposits.
- 56. Loans.
- 57. Gifts.
- 58. Expenditures.
- 59. Submission to arbitration.
- 60. Confession of judgment.
- 61. Estoppel.
- 62. Individual interest in transactions.
- 63. Fraud.
- 64. Waste, conversion, or embezzlement by guardian.
- 65. Loss of property.
- 66. Torts.
- 67. Presentation and payment of claims.
- 68. Reimbursement and indemnity to guardian.
- 69. Conveyances, contracts, and other transactions between guardian and ward.
- 70. Ratification of unauthorized acts.
- 71. Joint guardianship.
- 72. Successive guardianships.
- 73. Representatives of deceased guardians.
- 74. Mortgage or lien of ward on property of guardian.

IV. SALES AND CONVEYANCES UNDER ORDER OF COURT.

- 75. Nature of remedy.
- 76. Statutory provisions.
- 77. Purposes for which authorized.
- 78. Persons entitled to apply.
- 79. Property or interests subject to disposal.
- 80. Form of proceeding.
- 81. Jurisdiction.
- 82. Time for application.
- 83. Parties.
- 84. Guardians ad litem or special guardians.
- 85. Termination of guardianship pending proceedings.
- 86. Petition or other application.
- 87. Citation or notice.

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IV. SALES AND CONVEYANCES UNDER ORDER OF COURT.(Cont'd)

88. Hearing of application in general.
89. Determination as to necessity for sale, mortgage, or lease.
90. Order or decree.
91. Oath.
92. Special bond for sale.
93. Appraisal of property to be sold.
94. Sale.
- 94.1. — In general.
95. — Authority and powers in making in general.
96. — Notice.
97. — Manner and conduct.
98. — Terms and conditions.
99. — Persons who may purchase.
100. — Requisites and validity in general.
101. — Failure of bidder to complete purchase, and resale thereon.
102. — Report or return.
103. — Confirmation.
104. — Ratification and curing defects.
105. — Opening, vacating, or setting aside, and resale thereon.
 - (1). In general.
 - (2). Invalidity of appointment of guardian.
 - (3). Jurisdictional defects.
106. — Operation and effect.
107. — Collateral attack.
108. Rights and liabilities of purchasers.
109. Liabilities of guardians.
110. Liabilities on bonds for sale.
111. Deed to purchaser.
112. Mortgage.
113. Lease.
114. Proceeds.
115. Ratification of unauthorized act.

V. ACTIONS.

116. Capacity of guardian to sue and be sued in general.
 - (1). In general.
 - (2). Authority of court or family meeting.
117. Rights of action between guardian and ward.
118. Rights of action by guardian or ward or both.

V. ACTIONS.(Cont'd)

119. Rights of action against guardian or ward or both.
120. Defenses against guardian or ward.
121. Defenses by guardian or ward.
122. Set-off and counterclaim.
123. Jurisdiction.
124. Venue.
125. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
126. Parties.
127. Joinder or intervention of guardian in actions by others.
128. Termination of guardianship pending action.
129. Process and appearance.
130. Pleading.
131. Evidence.
132. Trial.
133. Judgment.
134. Execution and enforcement of judgment.
135. Appeal and error.
136. Costs.

VI. ACCOUNTING AND SETTLEMENT.

137. Duty to account in general.
138. Who entitled to require accounting.
139. Who liable.
140. Property subject to charge.
141. Property to be included.
142. Release from liability.
143. Nature and form of proceeding for accounting.
144. Jurisdiction of courts.
145. Proceedings for accounting.
146. Actions for accounting.
147. Charges.
148. Credits.
149. Compensation.
150. — In general.
151. — Commissions.
152. — Extra allowances.
153. Form and requisites of account.
154. Vouchers and proof of payment.
155. Objections and exceptions.
156. Examination of guardian.
157. Evidence.
158. Hearing or reference.
159. Order or decree.

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VI. ACCOUNTING AND SETTLEMENT.(Cont'd)

- 160. Opening or vacating.
- 161. Review.
- 162. Costs and expenses.
- 163. Operation and effect.
- 164. Private accounting and settlement.
- 165. Actions to open or set aside settlement.

VII. FOREIGN AND ANCILLARY GUARDIANSHIP.

- 166. Foreign appointment.
- 167. Ancillary appointment.
- 168. Custody and disposition of property.
- 169. Sales and conveyances under order of court.
- 170. Actions by foreign guardians.
- 171. Actions against foreign guardians.
- 172. Accounting and settlement.

VIII. LIABILITIES ON GUARDIANSHIP BONDS.

- 173. Nature and extent in general.
- 174. Property covered.
- 175. Functions and acts covered.
- 176. Settlement and discharge of principal.
- 177. Discharge of sureties.
- 178. Breach or fulfillment of condition.
- 179. Necessity of accounting and default by principal.
- 180. Conclusiveness of adjudication against principal.
- 181. Summary remedies.
- 182. Actions.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Time to sue and limitations.
 - (4). Parties.
 - (5). Pleading.
 - (6). Evidence.
 - (7). Trial and judgment.

197. HABEAS CORPUS

SUBJECTS INCLUDED

Writs of habeas corpus commanding the production of a person detained by another,

with the cause of such detention, for determination thereof

Nature and scope of the remedy in general

Grounds of such writs

To and against whom and for what restraint they are allowed

Jurisdiction to grant and proceedings to obtain the writ

Issuance, requisites and validity of writs, service thereof, return thereto and proceedings thereon

Judgments or orders and enforcement thereof

Review of proceedings and costs

Disobedience to such writs

Suspension of the remedy

Personal restraint petitions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conflicting jurisdiction of particular courts, see COURTS and FEDERAL COURTS

Habeas corpus ad prosequendum, for production of accused in the prosecution, see CRIMINAL LAW

Habeas corpus ad testificandum, for production of prisoners to testify as witnesses, see WITNESSES

I. IN GENERAL, ¶201-440.

(A) IN GENERAL, ¶201-250.

1. NATURE OF REMEDY IN GENERAL, ¶201-220.

2. NECESSITY AND EFFECT OF WRIT; MOOTNESS AND PREMATURITY, ¶221-250.

(B) NECESSITY, NATURE, AND SUFFICIENCY OF RESTRAINT OR DETENTION, ¶251-270.

(C) EXISTENCE AND EXHAUSTION OF OTHER REMEDIES, ¶271-310.

(D) FEDERAL COURT REVIEW OF PETITIONS BY STATE PRISONERS, ¶311-440.

1. IN GENERAL, ¶311-330.

2. PARTICULAR ERRORS AND PROCEEDINGS, ¶331-350.

3. PARTIAL EXHAUSTION, ¶351-360.

4. SUFFICIENCY OF PRESENTATION OF ISSUE OR UTILIZATION OF STATE REMEDY, ¶361-400.

197. HABEAS CORPUS

I. IN GENERAL—Cont'd

(D) FEDERAL COURT REVIEW OF PETITIONS BY STATE PRISONERS—Cont'd

5. AVAILABILITY OF REMEDY DESPITE PROCEDURAL DEFAULT OR WANT OF EXHAUSTION, ⚭401–420.

6. STATE'S RELIANCE ON OR WAIVER OF PROCEDURAL BAR OR WANT OF EXHAUSTION, ⚭421–430.

7. DETERMINATION, ⚭431–440.

II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT, ⚭441–600.

(A) GROUND AND NATURE OF RESTRAINT, ⚭441–460.

(B) PARTICULAR DEFECTS AND AUTHORITY FOR DETENTION IN GENERAL, ⚭461–519.

(C) RELIEF AFFECTING PARTICULAR PERSONS OR PROCEEDINGS, ⚭520–600.

III. JURISDICTION, PROCEEDINGS, AND RELIEF, ⚭601–890.

(A) IN GENERAL, ⚭601–610.

(B) JURISDICTION AND VENUE, ⚭611–660.

1. IN GENERAL, ⚭611–630.

2. PERSONAL JURISDICTION AND VENUE, ⚭631–650.

3. WAIVER AND TRANSFER, ⚭651–660.

(C) PROCEEDINGS, ⚭661–810.

1. IN GENERAL, ⚭661–698.

2. EVIDENCE, ⚭699–740.

3. HEARING, ⚭741–760.

4. CONCLUSIVENESS OF PRIOR DETERMINATIONS, ⚭761–790.

5. DETERMINATION AND DISPOSITION; RELIEF, ⚭791–810.

(D) REVIEW, ⚭811–880.

1. IN GENERAL, ⚭811–840.

2. SCOPE AND STANDARDS OF REVIEW, ⚭841–860.

3. DETERMINATION AND DISPOSITION, ⚭861–880.

(E) COSTS, ⚭881–890.

IV. OPERATION AND EFFECT OF DETERMINATION; RES JUDICATA; SUCCESSIVE PROCEEDINGS, ⚭891–910.

V. SUSPENSION OF WRIT, ⚭911–913.

I. IN GENERAL.

(A) IN GENERAL.

1. NATURE OF REMEDY IN GENERAL.

201. In general.

I. IN GENERAL.(Cont'd)

202. Civil or criminal nature.

203. Collateral or direct attack.

204. Equitable considerations.

205. Constitutional and statutory provisions.

206. Purpose and use of writ.

206.1. — In general.

207. — Release from restraint.

208. — Other objectives; damages, etc.

209. Discretion of court.

210. Personal restraint petitions.

2. NECESSITY AND EFFECT OF WRIT; MOOTNESS AND PREMATURITY.

221. In general.

222. Right to immediate release, in general.

223. Particular issues and problems.

224. Petitioner released or discharged; expired sentences.

224.1. — In general.

225. — Release on parole or probation.

226. Collateral consequences, in general.

227. Multiple commitments; concurrent sentences.

228. Sentence valid in part.

229. Successive sentences; anticipated confinement.

230. Enhanced or enhancing sentences.

231. Prison conditions, management, or discipline; good time credits.

232. Infants; child custody.

233. Mentally disordered or chemically dependent persons.

234. Contemnors.

235. Aliens.

(B) NECESSITY, NATURE, AND SUFFICIENCY OF RESTRAINT OR DETENTION.

251. In general.

252. "In custody" requirement, in general.

253. Particular issues and problems.

254. Fines and assessments.

255. Release on bond, bail, or recognizance.

256. Probation, parole, conditional release, or furlough.

257. Aliens.

258. Armed services.

259. Voluntary restraint.

260. Public or private authority.

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(C) EXISTENCE AND EXHAUSTION OF OTHER REMEDIES.

- 271. In general.
- 272. Administrative remedies, and review thereof.
- 273. Exhaustion and procedural default, in general.
- 274. Pending proceedings; pretrial or pre-judgment petitions.
- 275. Particular issues and problems.
- 275.1. — In general.
- 276. — Plea and effect thereof.
- 277. — Prisons; conditions, discipline, transfer, etc.
- 278. — Length of sentence.
- 279. — Parole.
- 280. — Infants, child custody.
- 281. — Mentally disordered or chemically dependent persons.
- 282. — Aliens.
- 283. — Armed services.
- 284. — Native Americans; tribal courts.
- 285. Post-conviction motions or proceedings.
Includes new Trial motions.
- 285.1. — In general.
- 286. — Review thereof.
- 287. Appeal, error, or other direct review.
- 287.1. — In general.
- 288. — Habeas corpus as substitute remedy.
- 289. — Particular issues and problems.
- 290. Appeal, error, or other direct review of conviction.
- 290.1. — In general.
- 291. — Particular issues and problems.
- 292. — Indictment and information; plea.
- 293. — Evidence and witnesses; arrest and search.
- 294. — Trial.
- 295. — Counsel.
- 296. — Verdict, sentence, and punishment.

(D) FEDERAL COURT REVIEW OF PETITIONS BY STATE PRISONERS.

1. IN GENERAL.

- 311. Petitions by state or territorial prisoners in general.
- 312. Presentation of claim in state court, in general.

I. IN GENERAL.(Cont'd)

- 313. Forfeiture, waiver, bypass, procedural default, or failure to object.
- 313.1. — In general.
- 314. — Default, etc., precluding state court consideration.
- 315. — Contemporaneous objection requirement.
- 316. — Tactical decisions; deliberate bypass.
- 317. — Escape or flight.
- 318. — Guilty plea.
- 319. Exhaustion of state remedies.
- 319.1. — In general.
- 320. — Comity or jurisdiction.
- 321. — Civil actions; civil rights cases.

2. PARTICULAR ERRORS AND PROCEEDINGS.

- 331. Particular state proceedings.
- 332. Criminal prosecutions.
- 332.1. — In general.
- 333. — Mental competency, claims relating to.
- 334. — Extradition and detainers.
- 335. — Time; speedy trial; continuance.
- 336. — Indictment and plea.
- 337. — Jury; grand jury.
- 338. — Counsel.
- 339. — Evidence and witnesses; arrest and search.
- 340. — Trial; instructions.
- 341. — Prosecutorial misconduct; perjured testimony.
- 342. — Sentence and punishment.
- 343. Waiver by counsel alone.

3. PARTIAL EXHAUSTION.

- 351. In general; mixed petitions.
- 352. Dismissal.

4. SUFFICIENCY OF PRESENTATION OF ISSUE OR UTILIZATION OF STATE REMEDY.

- 361. In general.
- 362. Particular remedies or proceedings.
- 362.1. — In general.
- 363. — Review by highest state court.
- 364. — Habeas corpus.
- 365. — Coram nobis, post-conviction motion, or similar collateral proceedings.
- 366. — Direct review; appeal or error.
Includes appeal to intermediate court and pursuit of higher court review, but excludes appeal from denial of collateral relief, see ¶¶364, 365, above.

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I. IN GENERAL.(Cont'd)

- 367. — Review by Federal Supreme Court.
- 368. Necessity for repetition or pursuit of several remedies.
- 368.1. — In general.
- 369. — Sufficiency of direct review.
- 370. — Sufficiency of collateral attack.
- 371. — Class proceedings; vicarious exhaustion.
- 372. State proceedings pending.
- 372.1. — In general.
- 373. — Pretrial or prejudgment petitions.
- 374. Availability and effectiveness of state remedies.
Excludes futility because of settled state of substantive law, see ¶408 below.
- 374.1. — In general.
- 375. — Indigent petitioners.
- 376. — Availability of successive remedies.
- 377. — Delay in remedy; frustration by state.
- 378. — Availability at time of petition.
- 379. Rights and remedies lately available.
- 380. Sufficiency of presentation; fair presentation.
- 380.1. — In general.
- 381. — Identity of issues in state and federal courts.
- 382. — Identity of facts, law, and theory.
- 383. — Necessity and sufficiency of identification of federal constitutional issue.
- 384. Procedural error; wrong court or remedy.
- 385. Necessity, sufficiency, and effect of state court ruling on federal claim.

5. AVAILABILITY OF REMEDY DESPITE PROCEDURAL DEFAULT OR WANT OF EXHAUSTION.

Excludes instances in which state law does not require prior objection, see ¶313 et seq., above, and unavailability or ineffectiveness of state remedy, see ¶374-378, above.

- 401. In general.
- 402. Consideration of case so as to deny relief.
- 403. Invalidity of state procedural requirement; inconsistent application.
- 404. Cause and prejudice in general.
- 405. Cause or excuse.
- 405.1. — In general.

I. IN GENERAL.(Cont'd)

- 406. — Ineffectiveness or want of counsel.
- 407. — Ignorance of law or fact; novelty and change in law.
- 408. — Futility; settled state of law.
- 409. Prejudice.

6. STATE'S RELIANCE ON OR WAIVER OF PROCEDURAL BAR OR WANT OF EXHAUSTION.

- 421. In general.
- 422. State court decision on procedural grounds, and adequacy of such independent state grounds.
- 423. State court consideration of merits.
- 424. State court decision ambiguous or a denial on both grounds.

7. DETERMINATION.

- 431. In general.

II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT.

(A) GROUND AND NATURE OF RESTRAINT.

- 441. Improper restraint or detention in general.
- 442. Errors or irregularities; prejudice.
- 443. Jurisdictional defects.
- 443.1. — In general.
- 444. — Personal jurisdiction; venue.
- 445. Void or invalid judgment or order.
- 446. Excess of jurisdiction or authority.
- 447. Deprivation of fundamental or constitutional rights; miscarriage of justice.
- 448. Lawful detention; valid or errorless judgment or order; conviction.
- 448.1. — In general.
- 449. — Judgment affirmed; habeas corpus as second appeal.
- 450. Federal review of state or territorial cases.
- 450.1. — In general.
- 451. — Supervisory or appellate authority.
- 452. — Federal or constitutional questions.
- 453. — Questions of local law.

(B) PARTICULAR DEFECTS AND AUTHORITY FOR DETENTION IN GENERAL.

- 461. Grounds in general.

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II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT.(Cont'd)

- 462. Criminal liability; innocence.
- 463. Authority for detention under statute or ordinance.
- 463.1. — In general.
- 464. — Validity of statute or ordinance.
- 465. Defenses.
- 465.1. — In general.
- 466. — Former jeopardy.
- 467. Courts; judges, magistrates, or officers.
- 468. Priority of right to custody.
- 469. Bail.
- 470. Arrest; pretrial detention and presentation to magistrate.
- 471. Searches and seizures; electronic surveillance.
- 472. Preliminary hearing or examination.
- 473. Grand jury.
- 474. Indictment, information, affidavit, or complaint.
- 475. Arraignment and plea.
- 475.1. — In general.
- 476. — Plea bargain.
- 477. Mental competency; examination.
- 478. Joinder or severance of counts or defendants.
- 479. Time for trial; continuance.
- 480. Discovery and disclosure.
- 481. Conduct of trial, in general.
- 482. Counsel.
- 482.1. — In general.
- 483. — Stage or nature of proceedings.
- 484. — Inquiry, advice, warnings, and assistance; waiver.
Excludes right to appointment at various stages or proceedings, see ¶483, above.
- 485. — Choice of counsel; change; “standby.”
- 486. — Adequacy and effectiveness of counsel.
 - (1). In general.
 - (2). Particular issues and problems.
 - (3). Arraignment and plea.
 - (4). Evidence; procurement, presentation, and objection.
 - (5). Post-trial proceedings; sentencing, appeal, etc.
- 487. — Conflict of interest; joint representation.

II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT.(Cont'd)

- 488. — Access and consultation; delay and want of preparation.
- 489. Evidence.
- 489.1. — In general.
- 490. — Admissibility.
 - (1). In general.
 - (2). Identification of accused.
 - (3). Confessions, declarations, and admissions.
 - (4). Illegally obtained evidence.
 - (5). Opinion evidence.
 - (6). Other offenses.
- 491. — Perjured or falsified evidence; recantation.
- 492. — Exclusion of evidence.
- 493. — Weight and sufficiency.
 - (1). In general.
 - (2). Federal review of state proceedings, in general.
 - (3). Particular issues and problems.
- 494. — Newly discovered evidence.
- 495. Witnesses; examination.
Excludes expert witnesses, see ¶490(5), above.
- 496. Jury.
- 497. Prosecutorial and police misconduct; argument.
- 498. Instructions.
- 499. Conduct and deliberations of jury.
- 500. Review; post-conviction relief and new trial.
- 500.1. — In general.
- 501. — Transcript or record.
- 502. — Indigents.
- 503. Judgment, sentence, or order.
- 503.1. — In general.
- 504. — Void sentence.
- 505. — Procedural errors.
- 506. — Probation or suspension.
- 507. — Excessiveness.
- 508. — Death sentence.
- 509. — Habitual or repeat offenders.
 - (1). In general.
 - (2). Validity of prior adjudications.
- 510. — Computation.
 - (1). In general; completion of term.
 - (2). Credits.
- 511. — Delay in enforcement.
- 512. Nature and place of confinement.

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II. GROUNDS FOR RELIEF; ILLEGALITY OF RESTRAINT.(Cont'd)

- 512.1. — In general.
- 513. — Limitations and conditions; treatment and discipline.
- 514. — Place of confinement; transfer.
- 515. — Good conduct credit.
- 516. Pardon and parole.
- 516.1. — In general.
- 517. — Revocation.

(C) RELIEF AFFECTING PARTICULAR PERSONS OR PROCEEDINGS.

- 520. In general.
- 521. Aliens.
- 522. Armed services.
- 522.1. — In general.
- 523. — Compulsory service.
- 524. — Courts martial.
- 525. Extradition and detainees.
- 525.1. — In general.
- 526. — Particular issues and problems.
- 527. — International extradition.
- 528. Contempt.
- 528.1. — In general.
- 529. — Domestic relations cases.
- 529.5. Enemy combatants and similar detainees.
- 530. Federal officers, relief of.
- 531. Infants.
- 531.1. — In general.
- 532. — Custody in general.
 - (1). In general.
 - (2). Judgment or order awarding custody.
- 533. — Illegitimate children.
- 534. — Adoption.
- 535. — Delinquents and young offenders.
- 536. — Dependent or neglected children; termination of parental rights.
- 537. Mentally disordered and chemically dependent persons.
- 537.1. — In general.
- 538. — Convicts and insanity acquittees; incompetent defendants.
- 539. Native Americans; tribal courts.
- 540. Quarantine and health.

III. JURISDICTION, PROCEEDINGS, AND RELIEF.

(A) IN GENERAL.

- 601. In general.
- 602. Estoppel; petitioner's misconduct.
- 603. Limitations, laches or delay.
- 603.1. — In general.
- 603.2. — Laches or delay in general.
- 603.3. — Limitations applicable.
- 603.4. — Bar of limitations in general.
- 603.5. — Accrual.
- 603.6. — Relation back.
- 603.7. — Cause, prejudice, and exceptions in general.
- 603.8. — Tolling in general.
- 603.9. — Pursuit of other remedies.
- 603.10. — Wrongful impediment by state.
- 603.11. — Newly recognized rights.
- 603.12. — Delayed discovery of claim.
- 603.13. — Equitable tolling in general.
- 603.14. — Petitioner's mental state, ignorance, or lack of skill.
- 603.15. — Causation.
- 603.16. — Access and assistance.
- 603.17. — Diligence.
- 603.18. — Miscarriage of justice; actual innocence.
- 603.19. — Newly discovered evidence.
- 603.20. — Proceedings in general.
- 603.21. — Evidence.
- 603.22. — Date of filing; mailbox rule.

(B) JURISDICTION AND VENUE.

1. IN GENERAL.

- 611. In general.
- 612. State courts; judges, or officers.
- 612.1. — In general.
- 613. — Appellate courts.
- 614. — Infants; custody cases.
 - (1). In general.
 - (2). Interstate disputes.
- 615. — Extradition or detainer cases.
- 616. — Persons in federal custody.
- 617. Federal courts.
- 617.1. — In general.
- 618. — Military courts.
- 619. — Courts of territories or possessions; District of Columbia.

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III. JURISDICTION, PROCEEDINGS, AND RELIEF.(Cont'd)

- 620. — Detention by state or territorial authorities.
 - (1). In general.
 - (2). Who are state prisoners.
- 621. Exclusive, concurrent, or conflicting jurisdiction.
- 621.1. — In general.
- 622. — Review of different court.
 - (1). In general.
 - (2). Court of superior or coordinate jurisdiction.
- 623. — Preference for inferior over appellate court.
- 624. — Infants; custody cases.

2. PERSONAL JURISDICTION AND VENUE.

- 631. In general; territorial limitations in general.
- 632. Federal courts.
- 632.1. — In general.
- 633. — State or territorial prisoners.
- 634. State or territorial courts.
- 635. Inmates of mental institutions.
- 636. Infants; custody cases.
- 637. Extradition and detainer cases.
- 638. Armed services.
- 639. Aliens.
- 640. Transfer of prisoner pending proceedings.

3. WAIVER AND TRANSFER.

- 651. Waiver of objections.
- 652. Transfer and change of venue.

(C) PROCEEDINGS.

1. IN GENERAL.

- 661. In general.
- 662. Parties; standing.
- 662.1. — In general.
- 663. — Representative or class actions.
- 664. Pleadings and motions in general.
- 665. Petition or application.
- 665.1. — In general. *
- 666. — Characterization; treatment as habeas corpus petition.
- 667. — Construction; liberality and disregard of technical requirements.

III. JURISDICTION, PROCEEDINGS, AND RELIEF.(Cont'd)

- 668. — Pro se or lay petitions.
- 669. — Formal requirements.
- 670. — Particular issues and problems, sufficiency of petition.
 - (1). In general.
 - (2). Identity of custodian and place of custody.
 - (3). Exhaustion of remedies; prior applications.
 - (4). Counsel.
 - (5). Plea.
 - (6). Evidence and witnesses; arrest and search.
 - (7). Perjured testimony.
 - (8). Sentence and punishment; parole.
 - (9). Review procedures; new trial.
 - (10). Infants; child custody.
 - (11). Mentally disordered and chemically dependent persons.
- 671. Exhibits and attachments.
- 672. Demurrer; amended and supplementary pleadings.
- 673. Signature and verification.
- 674. Allowance and issuance of writ or rule to show cause.
- 674.1. — In general.
- 675. — Summary disposition for facial insufficiency of petition.
- 676. — Form and requisites of writ.
- 677. Process or notice.
- 678. Operation and effect of writ or application.
- 678.1. — In general.
- 679. — Supersedeas or stay of proceedings.
- 680. Return or answer.
- 680.1. — In general.
- 681. — Mode, form, requisites, and sufficiency.
- 682. — Production of record or transcript.
- 683. — Conclusiveness and effect.
- 684. — Defects, objections, and amendment.
- 685. Production of person on return or for hearing.
- 686. Reply or answer to return or answer.
- 687. Issues, proof, and variance.

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III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)

- 688. Discovery and disclosure; physical or mental examination.
- 689. Time for proceedings; continuance.
- 690. Counsel, right and necessity.
- 691. Dismissal.
Strictly limited to dismissal as a remedy. Excludes dismissal of "mixed petitions," see ¶352, above, "summary" dismissal, see ¶675, above, and dismissal with or without prejudice, see ¶894 et seq., below.
- 691.1. — In general.
- 692. — Voluntary dismissal or withdrawal.
- 693. — Proceedings.

2. EVIDENCE.

Excludes evidence on exhaustion or bypass issues in federal courts, see ¶431, above.

- 699. In general.
- 700. Judicial notice.
- 701. Presumptions.
- 701.1. — In general.
- 702. — Validity and regularity of prior proceedings.
- 703. — Assistance of counsel.
- 704. — Extradition.
- 705. Burden of proof.
- 705.1. — In general.
- 706. — Particular issues and problems.
- 707. — Guilty plea.
- 708. — Evidence and witnesses; arrest and search.
- 709. — Counsel.
- 710. — Sentence and punishment.
- 711. — Particular persons and proceedings.
- 712. Admissibility.
- 712.1. — In general.
- 713. — Record and papers in proceedings under review.
- 714. Weight and sufficiency in general.
- 715. Criminal proceedings, weight and sufficiency.
- 715.1. — In general.
- 716. — Arrest; searches and seizures.
- 717. — Indictment and information; arraignment and plea.
 - (1). In general.
 - (2). Voluntariness of plea.
- 718. — Mental competency; examination.
- 719. — Discovery and disclosure; coerced or perjured testimony.

III. JURISDICTION, PROCEEDINGS,
AND RELIEF.(Cont'd)

- 720. — Conduct of trial in general; time.
- 721. — Counsel.
 - (1). In general.
 - (2). Adequacy and effectiveness.
 - (3). Multiple representation; conflict of interest.
- 722. — Evidence and witnesses.
 - (1). In general.
 - (2). Confessions, statements, and admissions.
- 723. — Jury; grand jury; deliberations.
- 724. — Review.
- 725. — Sentence and punishment.
- 726. Relief affecting particular persons or proceedings, weight and sufficiency.
- 726.1. — In general.
- 727. — Aliens.
- 728. — Armed services.
- 729. — Extradition and detainees.
- 730. — Contempt.
- 731. — Infants.
- 732. — Mentally disordered and chemically dependent persons.

3. HEARING.

- 741. In general.
- 742. Discretion and necessity in general.
- 743. Particular issues and problems.
- 744. Child custody cases.
- 745. Criminal cases.
- 745.1. — In general.
- 746. — Counsel.
- 747. — Plea.
- 748. — Mental competency.
- 749. — Evidence and witnesses, arrest and search.
- 750. — Jury; grand jury.
- 751. — Sentence and punishment.
- 752. Conduct of hearing.
- 752.1. — In general.
- 753. — Reception of evidence; affidavits; matters considered.
- 754. Reference.

Excludes reference to United States Magistrate Judges, see UNITED STATES MAGISTRATE JUDGES.

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4. CONCLUSIVENESS OF PRIOR DETERMINATIONS.

- 761. In general.
- 762. Res judicata or collateral estoppel effect.
- 763. Adequacy or effectiveness of prior proceedings; full and fair litigation.
- 764. Matters determined on appeal.
- 765. State determinations in federal court.
Excludes determinations of state law, see §453, above, but includes application of law to case.
- 765.1. — In general.
- 766. — Adequacy or effectiveness of state proceeding; full and fair litigation.
- 767. — Issues and findings of fact; historical facts; credibility.
- 768. — Presumptive accuracy of state determination, and rebuttal of presumption.
- 769. — Existence and adequacy of record or findings.
- 770. — Particular issues and problems.
- 771. — Mental competency.
- 772. — Plea.
- 773. — Counsel.
- 774. — Waiver of rights; exhaustion, bypass, or default.
- 775. — Admissibility of evidence; arrest and search.
 - (1). In general.
 - (2). Adequacy or effectiveness of state proceeding; full and fair litigation.
- 776. — New evidence.
- 777. Decisions of United States Supreme Court.

5. DETERMINATION AND DISPOSITION; RELIEF.

- 791. In general.
- 792. Conditional relief; new trial or other proceeding.
- 792.1. — In general.
- 793. — Resentencing.
- 794. Proceedings by state prisoners in federal courts.
- 794.1. — In general.
- 795. — Conditional relief; new trial or other proceeding.
 - (1). In general.
 - (2). Opportunity for state court determination of admissibility of evidence.

III. JURISDICTION, PROCEEDINGS, AND RELIEF.(Cont'd)

- (3). Resentencing.
- (4). Exhaustion of remedies.
- 796. Particular persons or proceedings.
- 796.1. — In general.
- 797. — Mentally disordered and chemically dependent persons.
- 798. — Infants.
- 799. Findings; formal orders.
- 800. Bail or release pending proceeding.
- 801. Default or summary judgment.
- 802. Relief from judgment; revocation or modification.
- 803. New trial.
- 804. Enforcement; contempt.
- 805. Penalties and damages.

(D) REVIEW.

1. IN GENERAL.

- 811. In general.
- 812. Nature and form of remedy.
- 813. Jurisdiction.
- 814. Decisions reviewable.
- 815. Persons entitled to review; parties.
- 816. Presentation and reservation in lower habeas court of grounds of review.
- 817. Requisites and proceedings for transfer of cause.
 - 817.1. — In general.
- 818. — Certificate of probable cause.
- 819. — Time for proceeding.
- 820. — Proceeding in forma pauperis; counsel.
- 821. Effect of proceeding for review; stay.
- 821.1. — In general.
- 822. — Bail, release, or enlargement.
- 823. Record.
- 824. Assignment of errors and briefs.
- 825. Dismissal.
- 825.1. — In general.
- 826. — Mootness.
 - (1). In general.
 - (2). Parole or other release.
 - (3). Appeals not moot, or considered despite mootness.
 - (3.1). — In general.
 - (4). — Parole or other release.

198. HAWKERS AND PEDDLERS

III. JURISDICTION, PROCEEDINGS, AND RELIEF. (Cont'd)

- 827. Hearing and rehearing.
- 828. Habeas corpus to review proceedings.

2. SCOPE AND STANDARDS OF REVIEW.

- 841. In general.
- 842. Review de novo.
- 843. Discretion of lower court.
- 844. Presumptions and burden of proof.
- 845. Questions of law and fact.
- 846. Clear error.
- 847. Harmless, reversible, or prejudicial error.
- 848. Waiver of error on appeal; estoppel to assert error.
- 849. Subsequent appeals; review of intermediate court.

3. DETERMINATION AND DISPOSITION.

- 861. In general.
- 862. Remand.
- 862.1. — In general.
- 863. — Particular issues and problems.
- 864. — Criminal cases.
 - (1). In general.
 - (2). Competency.
 - (3). Plea.
 - (4). Evidence and witnesses; arrest and search.
 - (5). Sentence and punishment.
 - (6). Exhaustion and bypass issues.
 - (7). Counsel.
- 865. — Extradition and detainer cases.

(E) COSTS.

- 881. In general.
- 882. Domestic relations cases.
- 883. Indigent petitioners.

Excludes compensation of counsel for petitioner, see §690, above.

- 883.1. — In general.
- 884. — Transcripts.

IV. OPERATION AND EFFECT OF DETERMINATION; RES JUDICATA; SUCCESSIVE PROCEEDINGS.

- 891. In general.
- 892. Order of discharge or other relief.
- 892.1. — In general.

IV. OPERATION AND EFFECT OF DETERMINATION; RES JUDICATA; SUCCESSIVE PROCEEDINGS. (Cont'd)

- 893. — State prisoners in federal courts.
- 894. Refusal to discharge; subsequent applications; prejudice.
- 894.1. — In general.
- 895. — Dismissal without prejudice.
- 896. — Abuse of the writ, in general.
- 897. — Claims presented earlier.
- 898. — Claims not presented or adjudicated earlier.
 - (1). In general.
 - (2). Excuses for failure, ignorance or unavailability.
 - (3). Change in facts or law; new evidence.
 - (4). Partial exhaustion of state remedies.
- 899. Proceedings as to subsequent or successive applications; evidence.
- 900. Effect of determination on other remedial proceedings.
- 900.1. — In general.
- 901. — Civil rights actions.
- 902. — Child custody cases.

V. SUSPENSION OF WRIT.

- 911. In general.
- 912. Constitutional and statutory provisions.
- 913. Operation and effect of suspension.

198. HAWKERS AND PEDDLERS

SUBJECTS INCLUDED

Regulation of persons going from place to place selling or exchanging goods which they carry with them or themselves deliver

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Commerce, regulation of, see **COMMERCE**
Itinerant merchants, license as mercantile business, see **LICENSES**

198. HAWKERS AND PEDDLERS

Sales by traveling salesmen, see PRINCIPAL AND AGENT, SALES

1. Power to regulate.
2. Statutory and municipal regulations.
3. Who are hawkers or peddlers.
 - (1). In general.
 - (2). Sales by farmers of farm products.
 - (3). Sales of books.
 - (4). Sales to merchants for resale.
 - (6). Sales of meat by butchers.
 - (7). Sales by order or sample.
 - (8). Sale of sample.
 - (9). Delivery of goods.
4. Licenses and taxes.
 - (1). In general.
 - (2). Persons entitled to license.
 - (3). Exemptions.
5. Validity of sales.
6. Penalties for violations of regulations.
7. Offenses.

198H. HEALTH

SUBJECTS INCLUDED

Legal issues concerning the healing arts
Regulation of health care and health care providers
Liability of health care providers for medical malpractice, negligence, or breach of statutory duty
Public health
Government financial assistance to support health care, including Medicare and Medicaid
“Wrongful life” and “wrongful birth” claims
Nonconsensual health care and the right to die
Compensation of physicians and other health care providers
Health provider liability for injury to or by mentally disturbed patient

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Dead bodies, liability of hospital, see DEAD BODIES
Duty to provide health care insurance benefits, see INSURANCE
Health maintenance organizations as insurers, see INSURANCE
Indoor air regulations, see ENVIRONMENTAL LAW
Matters relating to care, commitment, training, custody, and disabilities of mentally disturbed persons, see MENTAL HEALTH
Sewage and septic systems, see ENVIRONMENTAL LAW
Smoking regulations, see ANTITRUST AND TRADE REGULATION, ENVIRONMENTAL LAW
Social workers, see LICENSES

I. REGULATION IN GENERAL, ¶100-349.

- (A) IN GENERAL, ¶100-108.
- (B) PROFESSIONALS, ¶109-229.
- (C) INSTITUTIONS AND FACILITIES, ¶230-289.
- (D) ORGANIZATIONS AND GROUPS, ¶290-299.
- (E) DRUGS; MEDICAL DEVICES AND INSTRUMENTS, ¶300-349.

II. PUBLIC HEALTH, ¶350-450.

III. GOVERNMENT ASSISTANCE, ¶451-574.

- (A) IN GENERAL, ¶451-459.
- (B) MEDICAL ASSISTANCE IN GENERAL; MEDICAID, ¶460-519.
- (C) FEDERAL MEDICAL ASSISTANCE TO THE ELDERLY (MEDICARE), ¶520-559.
- (D) HOSPITALS AND CLINICS, ¶560-569.
- (E) FEDERAL GRANTS, ¶570-574.

IV. RELATION BETWEEN PATIENT AND HEALTH CARE PROVIDER, ¶575-599.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY, ¶600-899.

- (A) IN GENERAL, ¶600-609.
- (B) DUTIES AND LIABILITIES IN GENERAL, ¶610-649.
- (C) PARTICULAR PROCEDURES, ¶650-749.

198H. HEALTH

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY—Cont'd

(D) DUTIES AND LIABILITIES TO NON-PATIENTS, ⚭750–764.

(E) DEFENSES, ⚭765–779.

(F) PERSONS LIABLE, ⚭780–799.

(G) ACTIONS AND PROCEEDINGS, ⚭800–899.

VI. CONSENT OF PATIENT AND SUBSTITUTED JUDGMENT, ⚭900–934.

VII. COMPENSATION, ⚭935–974.

VIII. CRIMES, ⚭975–992.

I. REGULATION IN GENERAL.

(A) IN GENERAL.

100. In general.
101. Power to regulate in general.
102. Constitutional and statutory provisions.
103. — In general.
104. — Purpose.
105. — Validity.
106. — Retroactive operation.
107. Preemption.
108. Practice of medicine by corporations or other business entities.

(B) PROFESSIONALS.

109. In general.
110. Who are health professionals.
111. Power to regulate professionals in general.
112. Authority to admit to practice.
113. Necessity of registration, certification or license.
114. — In general.
115. — Physicians and surgeons.
116. — Psychologists.
117. — Psychiatrists.
118. — Obstetricians and midwives.
119. — Dentists and oral surgeons.
120. — Osteopaths.
121. — Eye care professionals.
122. — Podiatrists.
123. — Nurses.
124. — Physical therapists.
125. — Physicians' assistants.
126. — Spiritualists, naturopaths, and other non-medical practitioners.
127. — Chiropractors.
128. — Massage professionals.
129. — Pharmacists.

I. REGULATION IN GENERAL.(Cont'd)

130. — Medical device providers and professionals.
131. — Veterinarians.
132. — Persons already licensed elsewhere.
133. Capacity and qualifications in general.
134. Education in general.
Educational requirements for particular specialties, see ⚭135–153.
135. Eligibility for or entitlement to registration, certification or license.
136. — In general.
137. — Physicians and surgeons.
138. — Psychologists.
139. — Psychiatrists.
140. — Obstetricians and midwives.
141. — Dentists and oral surgeons.
142. — Osteopaths.
143. — Eye care professionals.
144. — Podiatrists.
145. — Nurses.
146. — Physical therapists.
147. — Physicians' assistants.
148. — Spiritualists, naturopaths, and other non-medical practitioners.
149. — Chiropractors.
150. — Massage professionals.
151. — Pharmacists.
152. — Medical device providers and professionals.
153. — Veterinarians.
154. — Persons licensed to practice in another jurisdiction.
155. Application.
156. Examinations.
Psychological testing or evaluations, or tests for good moral character, see ⚭157.
157. Proceedings on application.
158. Judicial review.
159. Stay pending review.
160. Operation and effect of registration, certificate, or license.
161. Renewal of registration, license, or certificate.
162. Unauthorized practice.
Includes criminal offenses.
163. — In general.
164. — Physicians and surgeons.
165. — Psychologists.
166. — Psychiatrists.

198H. HEALTH

I. REGULATION IN GENERAL.(Cont'd)

- 167. — Obstetricians and midwives.
- 168. — Dentists and oral surgeons.
- 169. — Osteopaths.
- 170. — Eye care professionals.
- 171. — Podiatrists.
- 172. — Nurses.
- 173. — Physical therapists.
- 174. — Physicians' assistants.
- 175. — Spiritualists, naturopaths, and other non-medical practitioners.
- 176. — Chiropractors.
- 177. — Massage professionals.
- 178. — Pharmacists.
- 179. — Medical device providers and professionals.
- 180. — Veterinarians.
- 181. — Professionals licensed elsewhere.
- 182. Proceedings for unauthorized practice.
Includes criminal prosecutions.
- 183. — In general.
- 184. — Nature of proceedings.
- 185. — Indictment, information, or complaint.
- 186. — Evidence.
 - (1). In general.
 - (2). Presumptions.
 - (3). Burden of proof.
 - (4). Admissibility.
 - (5). Weight and sufficiency.
- 187. — Trial or hearing.
- 188. — Sentence and punishment.
- 189. — Penalties; other remedies.
- 190. — Judicial review.
- 191. Regulation of professional conduct; boards and officers.
- 192. — In general.
- 193. — Advertising.
- 194. — Regulatory boards, officers, and examiners.
- 195. — Immunity of boards and officers.
- 196. — Records and duty to report; confidentiality in general.
Duty to report child abuse, see INFANTS.
- 197. — Duty to provide emergency treatment; penalties.
Civil liability for breach of duty, see ¶658.
- 198. — Pharmacists.
- 199. Fees and taxes.
- 200. Peer review in general.
See also ¶268 et seq.

I. REGULATION IN GENERAL.(Cont'd)

- 201. Discipline, revocation, and suspension.
 - 202. — In general.
 - 203. — Power to act.
 - 204. — Grounds in general.
 - 205. — Negligence, malpractice, or incompetence.
 - 206. — Patient records; confidentiality.
Civil liability for breach of duty, see ¶642.
 - 207. — Criminal conviction or charges; effect of acquittal.
 - 208. — Drug or alcohol abuse.
 - 209. — Advertising or fraud; dishonesty.
 - 210. — Relationship with patient; sexual conduct.
 - 211. — Prescriptions; controlled substances.
 - 212. — Dealing with unqualified or unlicensed persons.
 - 213. — Effect of proceedings or determinations in other jurisdiction.
 - 214. Disciplinary proceedings.
 - 215. — In general.
 - 216. — Complaint, petition, or pleading.
 - 217. — Discovery, investigation, subpoena.
 - 218. — Evidence.
 - 219. — Hearing.
 - 220. — Composition of board or panel.
 - 221. — Findings.
 - 222. — Order, judgment, or remedy.
 - (1). In general.
 - (2). Fines or penalties.
 - (3). Collateral estoppel and res judicata.
 - 223. — Review.
 - (1). In general.
 - (2). Scope of review.
 - 224. Reinstatement.
 - 225. Abuse registry.
- (C) INSTITUTIONS AND FACILITIES.**
- 230. In general.
 - 231. Private or public status.
 - 232. Power to regulate.
 - 233. Power of local government.
 - 234. Supervision by courts in general.
 - 235. Establishment of hospitals and other facilities in general.
 - 236. Licenses, permits, and certificates.
See also, ZONING AND PLANNING.

198H. HEALTH

I. REGULATION IN GENERAL.(Cont'd)

- 237. — In general.
- 238. — Authority to grant.
- 239. — Grounds and defenses.
- 240. — Need, public necessity.
- 241. — Application.
- 242. — Proceedings on application.
- 243. — Evidence.
- 244. — Conditions.
- 245. — Review.
- 246. — Persons entitled to challenge application or decision.
- 247. Discipline and revocation of license, permit, or certificate; closure.
- 248. — In general.
- 249. — Grounds.
- 250. — Proceedings in general.
- 251. — Evidence.
- 252. — Determination.
- 253. — Review.
- 254. — Reinstatement.
- 255. Renewal of license, permit, or certificate.
- 256. Regulation of conduct in general.
- 257. Records and duty to report; confidentiality in general.
- 258. Duty to provide emergency care or admit; penalties.
Civil liability for breach of duty, see §658.
- 259. Officers and employees.
- 260. — In general.
- 261. — Appointment or election.
- 262. — Eligibility and qualification.
- 263. — Compensation and benefits.
- 264. — Duties and liabilities in general.
- 265. — Tenure in general.
- 266. — Adverse employment action; wrongful discharge.
- 267. Budgets and expenditures.
- 268. Staff privileges and peer review.
- 269. — In general.
- 270. — Peer review in general.
- 271. — Licenses and qualifications.
- 272. — Regulation by municipality.
- 273. — Suspension or termination of privileges; discipline.
- 274. — Liability or immunity.
- 275. — Actions and judicial review.

I. REGULATION IN GENERAL.(Cont'd)

- 276. Nursing homes.
Rest homes and other residential facilities accommodating elderly persons but not primarily providing health care, see ASYLUMS AND ASSISTED LIVING FACILITIES.
- 277. Home health care.
- 278. Laboratories.
- (D) ORGANIZATIONS AND GROUPS.

Compensation to professionals, see VII. *Regulation of health maintenance organizations in general, or as insurers, see* INSURANCE. *Regulation of "premium" rates, see* INSURANCE.
- 290. In general.
- 291. Purpose.
- 292. Power to regulate.
- 293. Supervision by courts in general.
- 294. Membership or affiliation with organization; contractual relationship.
- 295. Professional societies.
- (E) DRUGS; MEDICAL DEVICES AND INSTRUMENTS.

Regulation of pharmacists in general, see HEALTH I(B). *Malpractice or negligence of those prescribing or dispensing medicine, see* HEALTH V; *liability of pharmacists, see also* PRODUCTS LIABILITY. *Government payments for vaccine injury, see* HEALTH §389.
- 300. In general.
- 301. Power to regulate in general.
- 302. Purpose and construction of statutes.
- 303. Drugs and devices regulated.
- 304. Licensing and registration.
- 305. Prescription requirement; ethical drugs.
- 306. Safety and effectiveness in general.
- 307. Adulteration and defects; unsanitary conditions.
- 308. Advertising and other representations.
Federal Trade Commission Act, see ANTITRUST AND TRADE REGULATION.
- 309. Labeling requirements.
- 310. — In general.
- 311. — What constitutes labeling.
- 312. — Requisites and adequacy of labeling.
- 313. — Exemptions.
- 314. — Misbranding.
- 315. Applications and approvals.
- 316. — In general.
- 317. — New drugs.
- 318. — Exemptions.
Includes "grandfathered" drugs and devices and investigational or experimental drugs.
- 319. — Generic and orphan drugs; market exclusivity.

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I. REGULATION IN GENERAL.(Cont'd)

- 320. — Effect of approval or non-approval; off-label use.
- 321. Withdrawal, suspension, revocation, or reconsideration.
- 322. Administrative proceedings and rule-making.
- 323. Judicial review or intervention.
- 324. Animal drugs.
- 325. Cosmetics.
- 326. Injunctions.
- 327. — In general.
- 328. — Preliminary injunctions.
- 329. Penalties.
- 330. Seizure, forfeiture, and condemnation.
- 331. — In general.
- 332. — Proceedings.
- 333. — Evidence.

II. PUBLIC HEALTH.

- 350. In general.
- 351. Power to regulate.
- 352. — In general.
- 353. — Federal regulations.
- 354. — State and local regulations.
- 355. Constitutional, statutory, and regulatory provisions.
- 356. — In general.
- 357. — Purpose.
- 358. — Validity.
- 359. — Retroactive operation.
- 360. National board.
- 361. State and local boards, districts, and employees.
- 362. — In general.
- 363. — Establishment in general.
- 364. — Appointment and tenure.
- 365. — Compensation, expenses, and reimbursement.
- 366. — Authority in general.
- 367. — Duties and liabilities.
- 368. — Actions by or against.
- 369. Sanitary districts, boards, officers, and employees.
- 370. Administrative proceedings in general.
- 371. — In general.
- 372. — Rules and regulations in general.
- 373. — Notice.
- 374. — Hearings in general.

II. PUBLIC HEALTH.(Cont'd)

- 375. — Summary proceedings.
- 376. — Orders and other decisions in general.
- 377. Abatement.
- 378. Penalties and fines.
- 379. Judicial review of administrative proceedings.
- 380. — In general.
- 381. — Administrative decisions reviewable.
- 382. — Scope of judicial review of agency decision.
- 383. Contagious and infectious diseases.
- 384. — In general.
- 385. — Vaccination and immunization.
- 386. — Quarantine.
- 387. — Testing.
- 388. — Human immuno-deficiency virus and acquired immune deficiency syndrome.
- 389. — Vaccine injury programs; government liability.
National Childhood Vaccine Injury Act review by Court of Federal Claims of proceedings before special master, see UNITED STATES §1054.
- 390. Unsafe or unhealthful premises.
- 391. — In general.
- 392. — Buildings, structures, and building components.
- 393. — Protection against fire; exits.
- 394. — Adult establishments.
- 395. Records, reports, and disclosure.
- 396. — In general.
- 397. — Birth certificates.
- 398. — Death certificates.
- 399. — Contagious or infectious diseases.
- 400. — Human immuno-deficiency virus and acquired immune deficiency syndrome.

401. Charges for inspection and permits.

402. Injury compensation funds.

Regulation of malpractice funds as insurance, see INSURANCE §1022, 1250; excess coverage under malpractice funds, see INSURANCE §2394.

III. GOVERNMENT ASSISTANCE.

(A) IN GENERAL.

- 451. In general.
- 452. Constitutional and statutory provisions.
- 453. — In general.

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III. GOVERNMENT ASSISTANCE.(Cont'd)

- 454. — Purpose.
- 455. — Validity.
- 456. — Retroactive operation.
- 457. Preemption.

(B) MEDICAL ASSISTANCE IN
GENERAL; MEDICAID.

- 460. In general.
- 461. Medicaid and similar programs in general.
- 462. State participation in federal programs.
- 463. Rules and regulations in general.
- 464. — In general.
- 465. — Manuals and handbooks.
- 466. Eligibility for benefits.
- 467. — In general.
- 468. — Indigency in general.
- 469. — Residency.
- 470. — Aliens.
- 471. — Resources.
 - (1). In general.
 - (2). Income in general.
 - (3). Deductions and allowances in general.
 - (4). Transfer period.
 - (5). Marital assets in general.
 - (6). Trusts.
 - (7). Homes; real estate.
 - (8). Public benefits.
- 472. Benefits and services covered.
- 473. — In general.
- 474. — Necessity in general.
- 475. — Cosmetic or elective surgery.
- 476. — Mental health services.
- 477. — Rehabilitative services.
- 478. — Medical equipment; wheelchairs.
- 479. — Transportation services; vehicles.
- 480. — Abortion or birth control.
- 481. — Sex change; gender disorders.
- 482. — Medication.
- 483. — Experimental procedures.
- 484. Providers.
- 485. — In general.
- 486. — Licensing and credentialing in general.
- 487. — Reimbursement.
 - (1). In general.
 - (2). Rates in general.

III. GOVERNMENT ASSISTANCE.(Cont'd)

- (3). Nursing home and hospital rates in general.
- (4). Costs.
- (5). Payment and overpayment.
- 488. — Assignment of claims.
- 489. — Suspension or termination of provider participation; penalties.
- 490. Recovery back or recoupment of payments.
- 491. — In general.
- 492. — Liens in general.
- 493. — Aid recipient, recovery from.
- 494. — Estate of aid recipient, recovery from.
- 495. — Spouse of aid recipient, recovery from.
- 496. — Third persons, recovery from.
 - (1). In general.
 - (2). Tortfeasors in general.
 - (3). Malpractice tortfeasors.
- 497. — Settlements or judgments, recovery from.
- 498. — Recovery in excess of amount of benefits received.
- 499. Administrative proceedings.
- 500. — In general.
- 501. — Applications for benefits.
- 502. — Notice and hearing.
- 503. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 504. — Administrative review.
- 505. — Providers, proceedings regarding.
 - (1). In general.
 - (2). Suspension or termination of provider participation.
- 506. Judicial review; actions.
- 507. — In general.
Injunctive relief, see INJUNCTION ¶1289.
- 508. — Preservation of issue in general.
- 509. — Exhaustion of administrative remedies.
- 510. — Standing.
- 511. — Time.
- 512. — Scope of judicial review.
 - (1). In general.
 - (2). De novo review.

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III. GOVERNMENT ASSISTANCE.(Cont'd)

- (3). Abuse of discretion.
- (4). Arbitrary or capricious decision.
- (5). Substantial evidence.
- (6). Questions of law.

(C) FEDERAL MEDICAL ASSISTANCE TO THE ELDERLY (MEDICARE).

- 520. In general.
- 521. Rules and regulations in general.
- 522. — In general.
- 523. — Manuals and handbooks.
- 524. — Construction.
- 525. Eligibility for benefits.
- 526. Benefits or services covered.
- 527. — In general.
- 528. — Extended, continuing, supportive,
or custodial care.
- 529. — Medical equipment in general.
- 530. — Dental care.
- 531. — Experimental procedures or de-
vices.
- 532. Providers.
- 533. — In general.
- 534. — Licensing or credentialing.
- 535. — Reimbursement.
 - (1). In general.
 - (2). Rates in general.
 - (3). New providers in general.
 - (4). Costs incurred.
 - (5). Medical education expenses.
 - (6). Providers serving low-income pa-
tients.
- 536. — Assignment of claims.
- 537. — Suspension or termination of pro-
vider participation; penalties.
- 538. Recovery back or recoupment of pay-
ments.
- 539. — In general.
- 540. — Liens in general.
- 541. — Aid recipient, recovery from.
- 542. — Estate of aid recipient, recovery
from.
- 543. — Spouse of aid recipient, recovery
from.
- 544. — Third persons, recovery from.
- 545. — Medicare as second payer.
- 546. Administrative proceedings.
- 547. — In general.
- 548. — Notice and hearing.

III. GOVERNMENT ASSISTANCE.(Cont'd)

- 549. — Evidence.
- 550. — Questions of law and fact.
- 551. — Findings and conclusions.
- 552. — Reconsideration and reopening.
- 553. — Administrative review.
- 554. Judicial review; actions.
- 555. — In general.
- 556. — Right to and availability of judicial
remedy.
 - (1). In general.
 - (2). Finality requirement.
 - (3). Exhaustion of administrative rem-
edies.
 - (4). Standing.
- 557. — Scope of review.
 - (1). In general.
 - (2). Deference to agency in general.
 - (3). Tortfeasors in general.
 - (4). Abuse of discretion.
 - (5). Arbitrary or capricious determina-
tion.
 - (6). Substantial evidence.
 - (7). Questions of law.

(D) HOSPITALS AND CLINICS.

- 560. Public assistance.
- 561. — In general.
- 562. — State assistance.
- 563. — Federal assistance.
- 564. Duty of hospital which receives funding
to provide care to the indigent.
- 565. Emergency medical treatment.
*Civil liability for violations, see ¶658; duties in
general and penalties for violations, see ¶197 and 258.*
- 566. Nursing homes.
*Rest homes and other residential facilities accomodat-
ing elderly persons but not primarily providing health
care, see ASYLUMS AND ASSISTED LIVING FACIL-
ITIES.*

(E) FEDERAL GRANTS.

- 570. In general.

IV. RELATION BETWEEN PATIENT AND HEALTH CARE PROVIDER.

- 575. In general.
- 576. Nature and existence of relation.
*Professional-patient relationship as requisite to duty,
see ¶615.*
- 577. Termination of relationship.
- 578. Fiduciary duty.

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IV. RELATION BETWEEN PATIENT AND HEALTH CARE PROVIDER.(Cont'd)

- 579. Contract of employment.
- 580. Duty of patients.
- 581. Duty of health professional to advocate on patient's behalf.
- 582. Patients' rights.
Private suit for personal injuries to a patient resulting from violation of a patient's bill of rights statute by a health care professional or facility, see Part V.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.

(A) IN GENERAL.

- 600. In general.
- 601. Constitutional and statutory provisions.
- 602. — In general.
- 603. — Purpose.
- 604. — Validity.
- 605. — Retroactive operation.
- 606. — Limitation of amount of liability.
See also ¶834(1).
- 607. Preemption.
- 608. What law governs.

(B) DUTIES AND LIABILITIES IN GENERAL.

- 610. In general.
- 611. Elements of malpractice or negligence in general.
- 612. Duty.
- 613. — In general.
- 614. — Necessity and existence of duty.
- 615. — Professional-patient relationship as requisite to duty.
- 616. — Duty to provide care to indigents.
- 617. Standard of care.
- 618. — In general.
- 619. — Requisite skill, training, qualifications.
- 620. — Locality rule.
- 621. — Specialists.
- 622. Breach of duty.
- 623. — In general.
- 624. — Medical judgment.
- 625. — Warranty; ensuring result.
- 626. — Heightened degrees of care.
- 627. — Sudden emergency.
- 628. School of medicine.
- 629. Abandonment of patient.
- 630. Proximate cause.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

- 631. — In general.
- 632. — Proximate cause of death.
- 633. — Loss of chance and increased risk of harm.
- 634. Necessity and existence of injury.
- 635. Instructions or directions to patient.
- 636. Duty to warn patient under abortion statute or regulation.
- 637. Diagnosis in general.
- 638. Duty to inform patient of diagnosis.
Informed consent, see part VI.
- 639. — In general.
- 640. — Delay in informing patient.
- 641. Referral of patient.
- 642. Confidentiality; patient records.
Records and duty to report in general, see ¶196.
- 643. Sexual activity.

(C) PARTICULAR PROCEDURES.

- 650. In general.
- 651. Premises liability in general.
- 652. Nurses and physician's assistants in general.
- 653. Paramedics in general.
- 654. Medical care during emergency transport.
- 655. Hospitals in general.
Liability for negligence of physician, see ¶782.
- 656. — In general.
- 657. — Emergency room care in general.
- 658. — Duty as to indigents; screening and dumping.
Duties in general and penalties, see ¶197 and 258.
- 659. — Premises liability.
Injuries to visitors and other non-patients, see V(D).
- 660. — Negligent hiring or supervision.
- 661. — Lack of, or defective, equipment, supplies, or medicine.
- 662. Nursing homes.
- 663. Hospices.
- 664. Appliances and devices in general.
- 665. Surgery in general.
- 666. Objects left in body during surgery.
See also part V(F).
- 667. Internal medicine in general.
- 668. Respiratory.
- 669. Infections and infectious diseases.
- 670. Eyes.
- 671. Ear, nose, and throat.

198H. HEALTH

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

- 672. Plastic surgery; body part modification.
- 673. Diagnosis and treatment of cancer.
- 674. Orthopedics; fractures, sprains.
- 675. Cardiology; circulatory system.
- 676. Miscellaneous medical procedures.
- 677. — In general.
- 678. — Dermatology.
- 679. — Allergies.
- 680. — Endocrinology; glands.
- 681. — Neurology; nervous system.
- 682. Dentistry and oral surgery.
- 683. Obstetrics, gynecology, and reproductive health.
- 684. — In general.
- 685. — Failure or delay in diagnosing pregnancy.
- 686. — Wrongful conception or pregnancy resulting in birth of healthy child.
- 687. — “Wrongful life” or birth of unhealthy child.
 - (1). In general.
 - (2). Liability to parent.
 - (3). Liability to child.
- 688. Podiatry.
- 689. Osteopathy.
- 690. Chiropractic.
- 691. Spiritual treatment.
- 692. — In general.
- 693. — Christian Scientists.
- 694. Massage.
- 695. Mental health.
 - Liability to third party for actions of patient, see* *§753. Liability of owner or operator of asylum or assisted living facility for injuries to resident, see ASYLUMS AND ASSISTED LIVING FACILITIES. See also MENTAL HEALTH.*
- 696. — In general.
- 697. — Psychiatric treatment in general.
- 698. — Substance abuse treatment.
- 699. — Abuse of, or physical injury to patient in general.
- 700. — Protection of patient from other patients.
- 701. — Failure to commit patient; premature release.
- 702. — Escaping patients, injuries to.
- 703. — Suicide or self-inflicted injuries.
 - (1). In general.
 - (2). Institutionalized patients.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

- 704. Vaccination or immunization.
- 705. Laboratory work.
- 706. Pharmacological services.
 - Liability of pharmacist for injury caused by dispensing of drugs, see also PRODUCTS LIABILITY.*
- 707. Anesthesiology.
- 708. Radiology, ultrasound, and other medical imaging.
- 709. Examinations on behalf of third parties.
 - (1). In general.
 - (2). Employment.
 - (3). Insurance; workers' compensation.
- 710. Veterinarians.

(D) DUTIES AND LIABILITIES TO NON-PATIENTS.

- 750. In general.
- 751. Abuse of patient.
 - Abuse of child patient, see INFANTS.*
- 752. Acts of patients in general.
- 753. Acts of mental health patients.
 - Liability of owner or operator of asylum or assisted living facility for injuries to non-residents, see ASYLUMS AND ASSISTED LIVING FACILITIES.*
- 754. — In general.
- 755. — Duty to warn in general.
- 756. — Escaping patients.
- 757. — Released or non-committed patients.
- 758. — Hospitals, clinics, and other institutions.

(E) DEFENSES.

- 765. In general.
- 766. Contributory and comparative negligence.
- 767. Assumption of risk.
- 768. Immunity in general.
- 769. Good Samaritan doctrine.
- 770. Official or governmental immunity.
- 771. Immunity or liability limitation granted to charities.
 - See also CHARITIES* *§45(2).*

(F) PERSONS LIABLE.

- 780. In general.
- 781. Hospitals or clinics.
 - Liability of a hospital for actions of health care professionals which allegedly violate statutory requirements to provide emergency care, see* *§657, 658.*

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V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

- 782. — In general.
- 783. — Mental health treatment.
- 784. Nursing homes.
- 785. Health maintenance organizations.
- 786. Multiple professionals or health care workers in general.
- 787. Surgeons.

(G) ACTIONS AND PROCEEDINGS.

- 800. In general.
- 801. Jurisdiction.
- 802. Venue.
- 803. Conditions precedent in general.
- 804. Affidavits of merit or meritorious defense; expert affidavits.
- 805. Sanctions for failing to file affidavits; dismissal with or without prejudice.
- 806. Malpractice panels in general.
- 807. Notice.
- 808. Bonds.
- 809. Judicial review of panel decisions.
- 810. Right of action; standing.
- 811. Limitations; time requirements.
- 812. Parties.
- 813. Pleading.
- 814. Issues, proof, and variance.
- 815. Evidence.
- 816. — In general.
- 817. — Presumptions.
- 818. — Res ipsa loquitur.
- 819. — Burden of proof.
- 820. — Admissibility.
- 821. — Necessity of expert testimony.

Who qualifies as an expert, admissibility of expert testimony, and examination of experts, see EVIDENCE.

- (1). In general.
- (2). Standard of practice and departure therefrom.
- (3). Proximate cause.
- (4). Gross or obvious negligence and matters of common knowledge.
- (5). Particular procedures.
- 822. — Weight and sufficiency in general.
 - (1). In general.
 - (2). Degree of proof.
 - (3). Proximate cause.
- 823. — Weight and sufficiency, particular cases.

V. MALPRACTICE, NEGLIGENCE, OR BREACH OF DUTY.(Cont'd)

- (1). In general.
- (2). Hospitals in general; premises liability.
- (3). Emergency room care.
- (4). Protection of patients.
- (5). Surgical operations in general.
- (6). Infections and infectious diseases.
- (7). Orthopedics, fractures, sprains.
- (8). Diagnosis and treatment of cancer.
- (9). Obstetrics, gynecology, and reproductive health.
- (10). Dentistry and oral surgery.
- (11). Cardiology; circulatory system.
- (12). Radiology, ultrasound, and other medical imaging.
- (13). Pharmacological services.
Liability of a pharmacist for injury caused by the dispensing of drugs, see also PRODUCTS LIABILITY.
- (14). Mental health treatment.
- (15). Persons liable.
- 824. Questions of law or fact and directed verdicts.
- 825. — In general.
- 826. — Proximate cause.
- 827. Instructions.
- 828. Damages.
- 829. — In general.
- 830. — Measure and elements.
- 831. — Exemplary or punitive damages.
- 832. — Amount.
- 833. — Loss of chance and increased risk of harm.
- 834. — Statutory limits on damages awards.
 - (1). In general.
 - (2). Wrongful death.
- 835. Verdict and findings.

VI. CONSENT OF PATIENT AND SUBSTITUTED JUDGMENT.

- 900. In general.
- 901. What law governs.
- 902. Constitutional and statutory provisions.
- 903. Right of patient to refuse treatment in general.
- 904. Consent of patient.
- 905. — In general.

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VI. CONSENT OF PATIENT AND SUBSTITUTED JUDGMENT.(Cont'd)

- 906. — Informed consent in general; duty to disclose.
- 907. — What constitutes medical battery in general.
- 908. — Surgical procedures.
- 909. — Emergency exception.
- 910. Substituted judgment; role of guardian or others in general.
- 911. Minors in general; consent of parent or guardian.
- 912. Incompetent persons in general.
- 913. Terminal illness; removal of life support.
- 914. — In general; right to die.
- 915. — Substituted judgment; role of courts, physicians, guardians, family or others.
- 916. — Competent patients; living wills and other prior indications.
- 917. Duty to revive; effort required.
- 918. Dialysis.
- 919. Blood transfusions.
- 920. Amputations.
- 921. Persons liable.
- 922. Proceedings and actions.
- 923. — In general.
- 924. — Presumptions.
- 925. — Burden of proof.
- 926. — Weight and sufficiency of evidence.
- 927. — Jury questions.
- 928. — Damages.

VII. COMPENSATION.

- 935. In general.
- 936. What law governs.
- 937. Constitutional and statutory provisions.
- 938. Regulation of rates and charges.
- 939. — In general.
- 940. — Hospitals.
- 941. — Health maintenance and similar entities.
- 942. Contracts for services.
- 943. Quasi contract, quantum meruit, and emergency assistance.
- 944. Adequacy of services; consideration.
- 945. Unauthorized practitioners.
- 946. Estoppel.

VII. COMPENSATION.(Cont'd)

- 947. Amount.
- 948. Fee-sharing; referral fees.
- 949. Actions concerning compensation.
- 950. — In general.
- 951. — Nature and form of remedy.
- 952. — Standing.
- 953. — Defenses; limitations.
- 954. — Parties.
- 955. — Pleading.
- 956. — Evidence.
- 957. — Questions for jury.
- 958. — Instructions.
- 959. Liens.
- 960. — In general.
- 961. — Hospitals.

VIII. CRIMES.

Physician-assisted suicide, see SUICIDE.

- 975. In general.
- 976. Constitutional and statutory provisions.
- 977. Unsafe or unhealthful premises.
- 978. Fraud.
- 979. — In general.
- 980. — Medicare fraud.
- 981. — Medicaid fraud.
- 982. Pharmaceuticals, drugs, and medical devices.
- 983. Vaccines, immunizations.
- 984. Records and duty to report.
- 985. Communicable diseases.
- 986. Failure to provide adequate care.
- 987. Prosecutions in general.
- 988. Indictment and information.
- 989. Evidence.
- 990. Trial in general.
- 991. Questions for jury.
- 992. Instructions.

200. HIGHWAYS

SUBJECTS INCLUDED

Roads open for free passage to the public, established for public benefit

200. HIGHWAYS

Nature and scope of power to establish and maintain such roads in general

Constitutional and statutory provisions relating thereto

Appointment and removal, rights, powers, duties, and liabilities of highway boards, officers, etc.

Establishment of such roads by statutory proceedings, construction, repair, and improvement, and alteration, vacation, and abandonment thereof

Taxes for highway purposes and local assessments for particular roads

Title to and rights in the land occupied

Removal of and liabilities for obstructions, encroachments, etc.

Use of such roads, and liabilities for injuries from defects, obstructions, etc., therein, and for injuries from violations of the law of the road causing collisions, etc., not involving automobiles

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Automobiles, operation on highways, see AUTOMOBILES

Boundaries, highways as, see BOUNDARIES
Bridges, see BRIDGES

Dedication of lands to public use as highways, see DEDICATION

Eminent domain, exercise of power of, see EMINENT DOMAIN

Private persons, ways for accommodation of, see EASEMENTS

— Established by public authority, see PRIVATE ROADS

Railroads on or crossing highways, see RAILROADS, URBAN RAILROADS

Streets in incorporated cities, etc., see MUNICIPAL CORPORATIONS

Toll roads and turnpikes, see TURNPIKES AND TOLL ROADS

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(A) IN GENERAL, 0.5.

(B) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION, 1-17.

(C) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS, 18-68.

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I. IN GENERAL; ESTABLISHMENT.

(A) IN GENERAL.

0.5. Highways in general.

(B) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION.

1. In general.
2. Constitutional and statutory provisions.
3. Against whom prescription may be claimed.
4. Land subject to prescription.
5. Mode and extent of use.
6. Duration and continuity of use.
 - (1). In general.
 - (2). Interruption of use.
7. Adverse character of use in general.
 - (1). In general.
 - (2). Maintenance or repair by public authorities.
 - (3). Use of land varying from actual location of highway.
8. Claim or color of right to use.
9. Use and recognition of pre-existing road or other way.
10. Use where proceedings to establish highway defective.
11. Operation and effect.
12. — In general.
13. — Character and use of highway.
14. — Extent of highway.

200. HIGHWAYS

I. IN GENERAL; ESTABLISHMENT.(Cont'd)

15. Ascertainment and entry of record of highway by user.
16. Pleading existence of highway.
17. Evidence as to existence of highway.

(C) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS.

18. In general.
19. Constitutional and statutory provisions.
20. Necessity and utility of road.
21. Establishment by legislative act.
22. Jurisdiction and powers of local authorities.
23. — In general.
24. — Roads in different jurisdictions.
25. Establishment by ordinance or resolution of local authority.
26. Amendment or repeal of statute pending proceedings.
28. Parties.
 - (1). In general.
 - (2). Number and qualifications of petitioners.
29. Petition or other application.
 - (.5). In general.
 - (1). Prerequisite to jurisdiction.
 - (2). Application relating to two or more roads.
 - (3). Sufficiency of application in general.
 - (4). Averments as to parties and ownership of land.
 - (5). Description of road.
 - (6). Amendments.
 - (7). Objections and waiver thereof.
 - (8). Withdrawal.
30. Notice.
 - (.5). In general.
 - (1). Necessity of notice.
 - (2). Time of notice.
 - (3). Requisites and sufficiency of notice in general.
 - (4). Description of road.
 - (5). Service or posting of notice in general.
 - (6). Persons entitled to notice.
 - (7). Proof of service or posting.
 - (8). Objections and waiver thereof.

I. IN GENERAL; ESTABLISHMENT.(Cont'd)

31. Appearance and representation by attorney.
32. Remonstrances or answers to petition.
33. Conduct of proceedings on application in general.
34. Dismissal of proceedings.
35. Commissioners or viewers.
36. — In general.
37. — Appointment and qualifications.
 - (.5). In general.
 - (1). Appointment and removal.
 - (2). Eligibility.
 - (3). Oath.
 - (4). Objections and waiver thereof.
38. — Notice of proceedings.
 - (1). In general.
 - (2). Objections and waiver thereof.
39. — Acts and proceedings in general.
40. — View.
41. — Report and proceedings thereon.
 - (.5). In general.
 - (1). Form, sufficiency and validity of report in general.
 - (2). Report as to damages and cost.
 - (3). Certainty and sufficiency of description of road.
 - (4). Return of report and proceedings thereon in general.
 - (5). Time for making report, and effect of delay or failure to report.
42. Determination as to necessity and utility of road.
43. Location of road.
44. — In general.
- 44.1. — Variance from location described in petition, notice, or order.
45. — Township or section lines.
46. — Exemption of particular species of property.
 - (1). In general.
 - (2). Existing roads and other lands owned by county.
47. Width of road.
48. Laying out road.
49. — In general.
50. — Proceedings of commissioners, viewers, or surveyors.
51. — Consent of landowners.

200. HIGHWAYS

I. IN GENERAL; ESTABLISHMENT.(Cont'd)

- 52. Determination of character of road.
- 53. Judgment or order establishing road.
 - (1). In general.
 - (2). Description of location, and specification of width.
 - (3). Amendment or setting aside.
- 54. Record of proceedings.
- 55. Defects and objections and waiver thereof.
- 56. Curative statutes.
- 57. Appeal and error.
- 58. — In general.
- 58.1. — Right of review; appellate jurisdiction.
- 58.2. — Persons entitled to appeal.
- 58.3. — Decisions reviewable.
- 58.4. — Presentation and reservation of grounds for review.
- 58.5. — Parties.
- 58.6. — Proceedings for transfer.
- 58.7. — Record and proceedings not in record.
- 58.8. — Effect of appeal.
- 58.9. — Hearing in general.
- 58.10. — Scope and extent of review.
- 58.11. — Dismissal of appeal.
- 58.12. — Disposition of cause.
- 59. — Hearing de novo.
- 60. Certiorari to review proceedings.
- 61. Costs and expenses of proceedings.
- 62. Conclusiveness of decision.
- 63. Collateral attack.
- 64. Restraining opening of road.
- 65. Operation and effect.
- 66. — In general.
- 67. — Character and use of highway.
- 68. Pleading and evidence as to existence of highway.

II. ALTERATION.

- 69. Alteration of course, width, or grade.
- 70. — In general.
- 71. — Power to alter.
- 72. — Proceedings.
 - (1). In general.
 - (2). Petition, notice, and appearance.
 - (3). Remonstrances.
 - (4). Hearing and determination.

II. ALTERATION.(Cont'd)

- (5). Commissioners or viewers.
- (6). Judgment or order.
- (7). Appeal and certiorari.
- (8). Collateral attack.
- 73. — Operation and effect.

III. VACATION.

- 75. In general.
- 75.1. Right to vacate and grounds therefor in general.
- 75.2. Contracts to discontinue.
- 75.3. Discontinuance by vote.
- 76. Power to vacate.
- 77. Proceedings.
 - (1). In general.
 - (2). Petition and parties.
 - (3). Notice and appearance.
 - (4). Remonstrances.
 - (5). Hearing and determination.
 - (6). Commissioners or viewers.
 - (7). Judgment or order and record.
 - (8). Restraining discontinuance.
 - (9). Appeal and certiorari.
 - (10). Costs and expenses.
 - (11). Collateral attack.
- 78. Operation and effect.

IV. ABANDONMENT.

- 79.1. In general.
- 79.2. Nonuser in general.
- 79.4. Failure to open.
- 79.5. Nonuser of part of road.
- 79.6. Erection of gates, bars, or other structures.
- 79.7. Operation and effect.

V. TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS.

- 80. In general.
- 81. Reversion on discontinuance of highway.
- 82. Deviation of travel from impassable highway to adjoining land.
- 83. Rights as to soil, trees, grass, minerals and other materials within highway.
- 84. Lateral support.
- 85. Right of access.
- 86. Right to use of road.

200. HIGHWAYS

V. TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS.(Cont'd)

- 87. Rights and remedies as to obstructions and injuries to road.
- 88. Use of highway for other public purposes.
- 89. Use of highway for other purposes by abutting owner.

VI. HIGHWAY DISTRICTS AND OFFICERS.

- 90. Creation, existence, and powers of districts.
- 91. Creation and organization of road boards.
- 92. Creation and abolition of offices.
- 93. Appointment, qualification, and tenure of officers.
- 94. Compensation and expenses and personal interest in contracts.
- 95. Authority and powers.
 - (1). In general.
 - (2). Powers as to indebtedness and expenditures.
- 95.1. Proceedings.
- 96. Duties and liabilities.
 - (1). In general.
 - (2). Liabilities for penalties.
 - (3). Criminal responsibility.
- 97. Liabilities on official bonds.

VII. CONSTRUCTION, IMPROVEMENT, AND REPAIR.

- 97.1. In general.
- 97.5. Constitutional and statutory provisions.
- 98. Necessity for opening and constructing.
- 99. Authority and duty to construct.
- 99.1. Highway funds.
- 99.5. Existence and character of road.
- 100. Compelling opening and construction.
- 101. Proceedings to open in general.
- 102. Removal of fences and buildings.
- 103. Mode and plan of construction or improvement in general.
 - Environmental impact statements and environmental regulations in general, see ENVIRONMENTAL LAW.*
- 103.1. — In general.
- 103.2. — Protected areas; parklands and historic sites.
- 104. Mode of making alterations.
- 105. Authority and duty to improve, maintain and repair.
 - (1). In general.

VII. CONSTRUCTION, IMPROVEMENT, AND REPAIR.(Cont'd)

- (2). Roads in different jurisdictions or within municipalities.
 - 106. Compelling improvement or repair and remedies for breach of duty in that respect.
 - 107. Proceedings for improvement of highways and for construction of free gravel roads or turnpikes.
 - (1). In general.
 - (2). Submission of question to vote.
 - (3). Appeal.
 - (4). Collateral attack.
 - 108. Criminal responsibility for failure to maintain or repair.
 - 109. Materials for construction or repair.
 - 110. Appliances and machinery for construction and repair.
 - 111. Work of construction or repair.
 - 112. — In general.
 - 113. — Contracts.
 - (1). In general.
 - (4). Performance of contract and payment of compensation.
 - (5). Contractors' bonds and liability thereon.
 - 114. Damages from construction or repair.
 - 115. — In general.
 - 116. — Deduction or set-off of benefits.
 - 117. Liabilities for expenses or damages.
 - 118. — In general.
 - 119. — Apportionment.
 - 120. Drainage.
 - (5). In general.
 - (1). Power and duty as to drainage.
 - (2). Rights and remedies of abutting owners in general.
 - (3). Injunction.
 - (4). Damages, and actions therefor.
 - (5). Drainage districts.
 - 120.5. Lighting.
- ### VIII. TAXES, ASSESSMENTS, AND WORK ON HIGHWAYS.
- 121. Power of taxation and assessment in general.
 - 122. Constitutional and statutory provisions.
 - 123. Highway taxes.
 - 123.1. — In general.

200. HIGHWAYS

VIII. TAXES, ASSESSMENTS, AND WORK ON HIGHWAYS.(Cont'd)

- 124. — Purposes and grounds in general.
- 125. — Amount of tax.
- 126. — Persons and property liable.
- 127. — Levy and assessment.
 - (1). In general.
 - (2). Determination and statement of rate or amount of levy in general.
 - (3). Levy of greater amount than prescribed.
- 128. — Payment, collection, and enforcement.
- 129. — Remedies for erroneous taxation.
- 130. — Disposition of proceeds.
- 130.5. — Rights and remedies of taxpayer.
- 131. Local assessments and special taxes.
- 131.1. — In general.
- 132. — Purposes in general.
- 134. — Consent of landowners.
- 135. — Amount of assessment.
- 136. — Property liable and amount of benefit.
- 137. — Objections and estoppel or waiver.
- 138. — Proceedings for assessment.
- 139. — Mode of assessment in general.
- 140. — Apportionment of benefits and expenses.
- 141. — Certificate for work done against specific property.
- 142. — Confirmation, correction, or setting aside.
- 143. — Curative statutes.
- 144. — Reassessment or additional assessment.
- 145. — Lien.
- 146. — Payment and recovery of assessment paid.
- 147. — Collection and enforcement.
- 148. — Remedies for wrongful enforcement.
- 149. — Disposition of proceeds.
- 150. Poll taxes.
- 151. Work on road by taxpayers.
 - (1). In general.
 - (2). Criminal responsibility for failure to work.

IX. REGULATION AND USE FOR TRAVEL.

(A) OBSTRUCTIONS AND ENCROACHMENTS.

- 153. Obstruction of use of highway in general.
- 153.5. Billboards and highway beautification in general.
- 154. Buildings or other structures encroaching on highway.
- 155. Persons entitled to remedies.
- 156. Persons liable for obstruction or encroachment.
- 157. Removal.
- 158. Abatement.
- 159. Injunction.
 - (.5). In general.
 - (1). Grounds of relief.
 - (2). Proceedings.
- 160. Actions for damages.
 - (1). In general.
 - (2). Parties, pleading, and evidence.
 - (3). Trial and damages.
- 161. Actions for penalties.
- 162. Criminal responsibility.
- 162.1. — In general.
- 163. — Offenses.
 - (1). In general.
 - (2). Nature, existence, and legality of road.
 - (3). Knowledge, intent, and malice.
- 164. — Prosecution and punishment.
 - (.5). In general.
 - (1). Jurisdiction.
 - (2). Indictment or information.
 - (3). Evidence.
 - (4). Trial.
 - (5). Punishment and review.

(B) USE OF HIGHWAY AND LAW OF THE ROAD.

- 165. Power to control and regulate.
- 166. Statutory and local regulations.
- 167. Right to use.
- 170. Character and control of horses.
- 171. Care required in use of highway.
- 172. — In general.
- 173. — As to persons on foot.
- 174. — As to children and others under disability.
- 175. Meeting and crossing.

200. HIGHWAYS

IX. REGULATION AND USE FOR TRAVEL.(Cont'd)

- 176. Overtaking and passing.
- 177. Excessive speed and racing.
- 178. Approaching railroad.
- 179. Stopping and standing.
- 180. Horses or other animals not under control, and runaways.
- 181. Frightening animals.
- 182. Injuries to highways.
- 183. Liabilities for injuries.
- 183.5. Liens on vehicles for injuries.
- 184. Actions for injuries.
 - (.5). In general.
 - (1). Pleading.
 - (2). Evidence.
 - (3). Questions for jury.
 - (4). Instructions.
 - (5). Damages.
 - (6). Verdict and findings.
- 185. Penalties for violations of regulations.
- 186. Offenses incident to travel.

(C) INJURIES FROM DEFECTS OR OBSTRUCTIONS.

Excludes all automobile cases, see AUTOMOBILES VI.

- 187. Nature and grounds of liability.
 - (1). In general.
 - (2). Nature and existence of road or way.
 - (3). Liability of state.
- 188. Care required as to condition of highway.
- 189. Statutory provisions.
- 190. Duty and ability to repair.
- 191. Sufficiency and safety of highway in general.
- 192. Defects or obstructions causing injury.
- 193. Notice of defects or obstructions.
- 194. Precautions against injury.
- 195. Failure to prevent or remove obstruction.
- 196. Proximate cause of injury.
- 197. Contributory negligence.
 - (.5). In general.
 - (1). Care required in general.

IX. REGULATION AND USE FOR TRAVEL.(Cont'd)

- (2). Competency of person injured.
- (3). Knowledge of defect or danger.
- (4). Duty to observe defect or danger.
- (5). Leaving traveled way.
- (6). Contributory negligence as proximate cause of injury.
- 198. Liabilities of local authorities and officers.
- 199. Liabilities of abutting owners.
- 200. Liabilities of persons causing defects or obstructions.
- 201. Actions for injuries.
- 201.1. — In general.
- 202. — Grounds and conditions precedent in general.
- 203. — Notice of claim for injury.
- 204. — Defenses.
- 205. — Jurisdiction and venue.
- 206. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 207. — Parties.
- 208. — Pleading.
 - (1). In general.
 - (2). Issues, proof, and variance.
- 209. — Presumptions and burden of proof.
- 210. — Admissibility of evidence.
 - (1). In general.
 - (2). Condition of road and cause of injury in general.
 - (3). Condition of road at other times and places.
 - (4). Similar accidents or absence thereof.
- 211. — Sufficiency of evidence.
- 212. — Damages.
- 213. — Questions for jury.
 - (1). In general.
 - (2). Condition of road and negligence of defendant.
 - (3). Proximate cause of injury.
 - (4). Contributory negligence.
- 214. — Instructions.
- 215. — Verdict and findings.
- 216. — Appeal and error.

201. HOLIDAYS

SUBJECTS INCLUDED

Days designated by law, other than Sunday, for suspension of ordinary business or judicial or other official proceedings

Effect of violations of such laws on validity of acts, transactions, and proceedings affected, and on the rights and remedies of persons engaged therein

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Restrictions on grounds other than character of the day, such as regulation of sale of intoxicants, see INTOXICATING LIQUORS

Time, omission of holiday in computation, see TIME

1. Days appointed.
2. Half holidays.
3. Holidays falling on Sunday.
4. Private acts and transactions.
5. Judicial proceedings.
6. Official acts.

202. HOMESTEAD

SUBJECTS INCLUDED

Exemption from forced sale, for payment of debts, of real property of debtors, as constituting the family residence

Constitutional and statutory provisions for such exemption

Nature, grounds and extent thereof in general

Who are entitled to benefit of such exemptions

Acquisition, selection, declaration, and establishment of homestead

Quantity or value of property exempt

As to what liabilities homesteads are exempt

Waiver or forfeiture of right of exemption

Abandonment, alienation, devise, or descent of homestead

202. HOMESTEAD

Rights of devisees, heirs, or surviving members of family, and duration and termination of exemption

Protection and enforcement of the right

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Decedents' estates, quarantine, probate homestead or other occupation of real property, see EXECUTORS AND ADMINISTRATORS

Dower and curtesy rights, see DESCENT AND DISTRIBUTION IV

Exemption from forced sale of property of debtors in general, see EXEMPTIONS

Public lands, acquisition under homestead laws, see PUBLIC LANDS

Taxation of homestead, and tax exemption, see TAXATION

I. NATURE, ACQUISITION, AND EXTENT, ¶1-109.

(A) NATURE, CREATION, AND DURATION OF ESTATE OR RIGHT IN GENERAL, ¶1-15.

(B) PERSONS ENTITLED, ¶16-28.

(C) ACQUISITION AND ESTABLISHMENT, ¶29-57.5.

(D) PROPERTY CONSTITUTING HOMESTEAD, ¶58-89.

(E) LIABILITIES ENFORCEABLE AGAINST HOMESTEAD, ¶90-109.

II. TRANSFER OR INCUMBRANCE, ¶110-133.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS, ¶134-153.

IV. ABANDONMENT, WAIVER, OR FORFEITURE, ¶154-181.5.

V. PROTECTION AND ENFORCEMENT OF RIGHTS, ¶182-218.

I. NATURE, ACQUISITION, AND EXTENT.

(A) NATURE, CREATION, AND DURATION OF ESTATE OR RIGHT IN GENERAL.

1. Nature of estate or right.
2. What law governs.
3. Constitutional and statutory provisions.
4. Validity of statutes.
5. Construction of homestead laws in general.
6. Retroactive operation.
- 6.1. — In general.

202. HOMESTEAD

I. NATURE, ACQUISITION, AND EXTENT.(Cont'd)

7. — Liabilities and liens existing before homestead law.
8. — Liabilities existing before acquisition or establishment of homestead.
9. Effect of change or repeal of homestead exemption.
 - 9.1. — In general.
10. — Rights of debtors.
11. — Rights of creditors.
12. Nature and extent of right created.
13. Existence of more than one homestead.
14. Effect of ownership of other property.
15. Duration and termination.

(B) PERSONS ENTITLED.

16. Debtors or defendants.
17. Family relation in general.
18. Head of family and members thereof.
19. Householders.
20. Housekeepers.
21. Married women.
22. Children.
23. Unmarried persons.
24. Citizenship.
25. Residence.
 - 25.1. — In general.
26. — Domicile in general.
27. — Residing with family.
28. — Absence or removal.

(C) ACQUISITION AND ESTABLISHMENT.

29. Acquisition and selection of property in general.
30. Constitutional and statutory provisions.
31. Intent in acquisition and occupancy.
32. Necessity of occupancy.
33. Character and mode of occupancy.
34. Purpose of occupancy and use of property.
 35. — In general.
 36. — Business homestead.
 37. Extent of occupancy.
 38. Selection and dedication in general.
 39. Designation in conveyance.
 40. Entry on record of title.
 41. Declaration or certificate.
 - 41.1. — In general.

I. NATURE, ACQUISITION, AND EXTENT.(Cont'd)

42. — Necessity.
43. — Form and contents.
44. — Execution.
45. — Acknowledgment.
46. — Recording.
47. — Construction and operation.
48. Proceedings for allotment.
 - 48.1. — In general.
49. — Necessity.
50. — Nature and form.
51. — Application and proceedings thereon in general.
52. — Appraisal, survey, and setting apart.
53. — Review.
54. — Operation and effect.
55. Time of acquisition of homestead exemption.
56. Change of homestead.
57. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 57.5. Questions for jury.

(D) PROPERTY CONSTITUTING HOMESTEAD.

58. Nature of property in general.
59. Manner of acquisition.
60. Character as homestead.
61. Amount or extent.
 62. — In general.
 63. — Homestead in city, town, or village.
 64. — Effect of incorporation or extension of city, town, or village.
65. Value.
 66. — In general.
 67. — In city, town, or village.
 68. — Effect of increase or depreciation.
69. Form and physical characteristics.
70. Separate tracts or lots.
71. Part of tract, lot, or building.
72. Appurtenances.
73. Improvements and additions.
74. Rents, profits, and products.
75. Proceeds of homestead.
 76. — In general.

202. HOMESTEAD

I. NATURE, ACQUISITION, AND EXTENT.(Cont'd)

- 77. — Voluntary sale, exchange, or mortgage.
- 78. — Involuntary conversion.
- 79. — Proceeds of insurance.
- 80. — Property purchased with proceeds.
- 81. Ownership, estate, or interest in property in general.
- 82. Life estates.
- 83. Leaseholds.
- 84. Property of tenants in common and joint tenants.
- 85. Partnership property.
- 86. Community property.
- 87. Wife's separate property.
- 88. Equitable estates and interests.
- 89. Different homesteads in same property.

(E) LIABILITIES ENFORCEABLE AGAINST HOMESTEAD.

- 90. Exceptions from exemptions in general.
- 91. Constitutional and statutory provisions.
- 92. Exception of pre-existing liabilities and liens.
- 93. — In general.
- 94. — Liabilities existing before acquisition of property.
- 95. — Liabilities existing before establishment of homestead.
- 96. Purchase money and lien or mortgage therefor.
- 97. Claims and liens for creation, improvement, or preservation of property.
- 98. Wages and materials.
- 99. Loans and advances.
- 99.5. Credit extended without notice of homestead character of property.
- 100. Liabilities for torts.
- 101. Alimony.
- 102. Judgments.
- 103. — In general.
- 104. — Enforcement after termination of homestead.
- 105. Debts to government.
- 106. Proceedings for enforcement of claims.
- 107. — In general.
- 108. — Exhaustion of other property before resort to homestead.
- 109. — Disposition of proceeds.

II. TRANSFER OR INCUMBRANCE.

- 110. Power to transfer or incumber in general.
- 111. Constitutional and statutory provisions.
- 112. Sale or exchange.
- 113. Conveyance or mortgage between husband and wife.
- 114. Lease.
- 115. Mortgage.
 - (1). In general.
 - (2). Form, requisites, and validity.
 - (3). Foreclosure.
- 116. Creation of lien.
- 117. Consent of husband or wife.
- 118. Joinder of husband and wife in deed or mortgage.
 - (1). In general.
 - (2). Necessity of joinder in general.
 - (3). Conveyances and agreements required to be jointly executed.
 - (4). Nature and sufficiency of joinder and effect of fraud or duress.
 - (5). Effect of failure to join.
 - (6). Curative acts.
- 119. Acknowledgment of deed or mortgage.
- 120. Order of court.
- 121. Sale on foreclosure.
- 122. Estoppel to assert invalidity.
- 123. Ratification.
- 124. Effect of termination of homestead.
- 125. Value or land in excess of homestead.
- 126. Conveyance subject to homestead.
- 127. Rights of purchasers and mortgagees.
- 128. — In general.
- 129. — Bona fide purchasers.
 - (1). In general.
 - (2). Purchasers of lien notes.
- 130. Avoidance.
- 131. — In general.
- 132. — Restoration of consideration.
- 133. — Cancellation of instrument.

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS.

- 134. Continuance or transmission of estate or right in general.
- 135. Constitutional and statutory provisions.
- 136. Devise or other testamentary disposition.
- 137. Existence of other interest in property.

202. HOMESTEAD

III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS.(Cont'd)

- 138. Election between homestead and distributive share or year's support.
- 139. Nature of estate or right in general.
- 140. Rights of surviving husband.
- 141. Rights of surviving wife.
 - (1). In general.
 - (2). Effect of abandonment of husband.
- 142. Rights of children or heirs.
 - (1). In general.
 - (2). Course of descent of homestead in general.
- 143. Rights as between surviving spouse and children or heirs.
- 144. Duration and termination in general.
- 145. Abandonment, waiver, forfeiture, or release.
- 146. Transfer, lease, or incumbrance.
- 147. Subsequent marriage.
- 148. Majority of children.
- 149. Continuance of occupancy.
- 150. Proceedings for selection and allotment.
 - (1). In general.
 - (2). Operation and effect of allotment and vacating or setting aside same.
- 151. Property subject to appropriation as homestead.
- 152. Amount, extent, and value.
- 153. Enforcement of claims after termination of homestead.

IV. ABANDONMENT, WAIVER, OR FORFEITURE.

- 154. Loss or relinquishment of right in general.
- 155. Constitutional and statutory provisions.
- 156. Separation of family.
- 157. — In general.
- 158. — Divorce.
- 159. — Death.
- 160. Removal from homestead.
- 161. — In general.
- 162. — Intent to return.
 - (1). In general.
 - (2). Absence for business purposes.
 - (3). Removal for education of children.

IV. ABANDONMENT, WAIVER, OR FORFEITURE.(Cont'd)

- 163. — Acts constituting abandonment.
- 164. — Acquisition of other domicile or homestead.
- 165. Change in character or use of property.
- 166. Declaration or notice of abandonment.
- 167. Sale and conveyance.
- 168. Lease.
- 169. Power to waive.
- 170. Contracts waiving right in general.
- 171. Mortgage or other incumbrance as waiver of right.
- 172. Consent to levy and sale.
- 173. Revocation of waiver.
- 174. Operation and effect of waiver or abandonment.
- 175. — In general.
- 176. — As to other creditors.
- 177. Estoppel to claim homestead.
 - (1). In general.
 - (2). Statements and representations operating as estoppel.
- 178. Forfeiture.
- 179. — In general.
- 180. — Fraudulent conveyance.
- 181. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 181.5. Questions for jury.

V. PROTECTION AND ENFORCEMENT OF RIGHTS.

- 182. Establishment of right of exemption in general.
- 183. Statutory provisions.
- 184. Process or other proceedings as against which exemption may be allowed.
- 185. — In general.
- 186. — Levy of attachment or execution.
- 187. — Judicial sales in general.
- 188. — Foreclosure proceedings.
- 189. — Setting aside fraudulent conveyance.
- 190. Duties of officer making levy.
- 191. Necessity for claim.
- 192. Persons who may claim.

203. HOMICIDE

V. PROTECTION AND ENFORCEMENT OF RIGHTS.(Cont'd)

- 193. Time for making claim.
- 194. Form and requisites of claim.
- 195. Presentation and filing of claim.
- 196. Selection of homestead.
- 197. Contest and determination of claim.
- 198. Allotment.
- 198.1. — In general.
- 199. — Proceedings in general.
- 200. — Appraisal, survey, and setting apart.
- 201. — Operation and effect.
- 202. Retaining property beyond exemption on payment of excess.
- 202.5. Taking property on payment of homestead value.
- 203. Sale of property subject to homestead.
- 204. Successive exemptions.
- 205. Failure to make claim.
- 206. Denial or infringement of rights.
- 207. Motions and other summary remedies.
- 208. Actions and defenses.
- 208.1. — In general.
- 209. — Nature and form of remedy.
- 209.5. — Grounds.
- 210. — Jurisdiction.
- 211. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 212. — Parties.
- 213. — Pleading.
- 214. — Evidence.
- 215. — Damages.
- 216. — Trial.
- 217. — Judgment and enforcement thereof.
- 218. — Review.

203. HOMICIDE

SUBJECTS INCLUDED

Killing a human being, aiding in, attempting or soliciting such killing, and assaults with intent to kill

Nature and elements of murder, manslaughter, and of degrees thereof, and of attempts and assaults with intent to commit such offenses

Nature and extent of criminal responsibility therefor, and grounds of defense, more particularly justification or excuse

Prosecution and punishment of such acts as public offenses

Threats to kill

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Automobiles, homicide by, see AUTOMOBILES

Bail, right to, see BAIL

Civil liability for wrongful death or assault, see ASSAULT AND BATTERY, DEATH

Confinement after acquittal or other disposition on ground of mental disorder or insanity, see MENTAL HEALTH

Conspiracy to kill, see CONSPIRACY

Death penalty, see SENTENCING AND PUNISHMENT

Due process, equal protection, and other constitutional rights and privileges of accused, see also CONSTITUTIONAL LAW

Factors considered in determining punishment, see also SENTENCING AND PUNISHMENT

Indictments or other formal accusations, see also INDICTMENT AND INFORMATION

Jury trial, right to and waiver of, and qualifications and selection of jurors, see JURY

Killing one's self, see SUICIDE

New trial, application to trial courts for, see CRIMINAL LAW XXI

Pardon and commutation of sentence, see PARDON AND PAROLE I

Parole, eligibility for, see PARDON AND PAROLE II

Post-conviction relief and vacation of judgment, see CRIMINAL LAW XXX

Probation, eligibility for, see SENTENCING AND PUNISHMENT IX

Review on appeal, writ of error, or certiorari, see CRIMINAL LAW XXIV

Sentencing proceedings, see SENTENCING AND PUNISHMENT

203. HOMICIDE

Writ of habeas corpus, see HABEAS CORPUS

- I. IN GENERAL, ¶500-519.
- II. MURDER, ¶520-574.
- III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT, ¶575-653.
 - (A) IN GENERAL, ¶575-579.
 - (B) MURDER, ¶580-619.
 - (C) MANSLAUGHTER, ¶620-653.
- IV. MANSLAUGHTER, ¶654-724.
- V. ASSAULT WITH INTENT TO KILL, ¶725-749.
- VI. EXCUSABLE OR JUSTIFIABLE HOMICIDE, ¶750-814.
 - (A) IN GENERAL, ¶750-765.
 - (B) SELF-DEFENSE, ¶766-814.
- VII. CAPACITY TO COMMIT CRIME, ¶815-829.
- VIII. INDICTMENT AND INFORMATION, ¶830-899.
- IX. EVIDENCE, ¶900-1299.
 - (A) IN GENERAL, ¶900-904.
 - (B) PRESUMPTIONS AND INFERENCES, ¶905-927.
 - (C) BURDEN OF PROOF, ¶928-949.
 - (D) ADMISSIBILITY IN GENERAL, ¶950-1074.
 - (E) DYING DECLARATIONS, ¶1075-1109.
 - (F) PROCEEDINGS AT INQUEST, ¶1110-1124.
 - (G) WEIGHT AND SUFFICIENCY, ¶1125-1299.
- X. TRIAL IN GENERAL, ¶1300-1318.
- XI. QUESTIONS OF LAW OR FACT, ¶1319-1359.
- XII. INSTRUCTIONS, ¶1360-1549.
 - (A) IN GENERAL, ¶1360-1369.
 - (B) NECESSITY AND SUFFICIENCY, ¶1370-1449.
 - (C) NECESSITY OF INSTRUCTION ON OTHER GRADE, DEGREE, OR CLASSIFICATION OF OFFENSE, ¶1450-1464.
 - (D) PARTIES, ¶1465-1469.
 - (E) EXCUSES AND JUSTIFICATIONS, ¶1470-1499.
 - (F) CAPACITY TO COMMIT CRIME, ¶1500-1549.
- XIII. VERDICT, ¶1550-1559.
- XIV. SENTENCE AND PUNISHMENT, ¶1560-1574.

I. IN GENERAL.

- 500. In general.
- 501. Person subject of homicide.
- 502. — In general.
- 503. — Unborn children.
- 504. Nature of act or omission causing death.
- 505. Nature of means or instrument employed.
- 506. Nature of injury to person killed.
- 507. Cause of death.
- 508. Time of death.
- 509. — In general.
- 510. — Year and a day rule.
- 511. Corpus delicti.

II. MURDER.

Murder in commission of other offense or unlawful act (felony murder), see III.

- 520. In general.
- 521. Constitutional and statutory provisions.
- 522. — In general.
- 523. — Validity.
- 524. — Retroactive operation.
- 525. What constitutes murder in general.
- 526. Intent or mens rea.
 - Affecting degree of murder, see ¶541, 546, 548.*
 - Transferred intent, see ¶555.*
- 527. — In general.
- 528. — Intent to injure or cause bodily harm.
- 529. Malice.
 - Affecting degree of murder, see ¶541, 546, 548.*
 - Absence of, as element of manslaughter, see ¶665.*
- 530. — In general.
- 531. — Express.
- 532. — Implied.
 - Circumstances giving rise to inference of malice, see ¶909.*
- 533. Recklessness, wantonness, or extreme indifference.
- 534. Deliberation and premeditation.
 - Affecting degree of murder, see ¶542, 547, 548.*
- 535. — In general.
- 536. — Time required.
- 537. Homicide in duel.
 - Includes mutual or voluntary combat or affray. Affecting degree, see ¶539, 544, 548.*
- 538. Degrees in general.
- 539. First degree, capital, or aggravated murder.
 - Public employees and officials as victims, see ¶550.*
 - Murder for hire or contract killing, see ¶563.*

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II. MURDER.(Cont'd)

- 540. — In general.
- 541. — Intent or mens rea; malice.
Transferred intent, see ¶555.
- 542. — Deliberation and premeditation.
- 543. — Sufficiency of deliberation; time required.
- 544. Second degree murder.
- 545. — In general.
- 546. — Intent or mens rea; malice.
Transferred intent, see ¶555.
- 547. — Deliberation and premeditation.
- 548. Third and lesser degrees of murder.
- 549. Degrees of murder compared and contrasted.
- 550. Public employees, officials, and persons assisting them.
Includes degrees as affected by official status of victim. Resistance of unlawful arrest as excuse or justification, see ¶805. Exercise of official authority as excuse or justification, see VI(A).
- 551. — In general.
- 552. — Law enforcement officers.
- 553. — Correctional employees and officers.
- 554. — Exercise of authority or duty.
- 555. Killing one person with intent to kill or injure another; transferred intent.
- 556. Attempt.
- 557. — In general.
- 558. — Intent or mens rea.
- 559. — Substantial step.
- 560. — Nature and extent of injury.
- 561. — Degrees of offenses.
 - (1). In general.
 - (2). First degree, capital, or aggravated murder.
 - (3). Second degree murder.
 - (4). Third and lesser degrees of murder.
- 562. Solicitation to kill.
- 563. Murder for hire; contract killing.
- 564. Motive.
- 565. Nature of act or omission causing death.
- 566. Cause of death.
- 567. Means, instrument, or device employed.
- 568. Parties to offense.
Liabilities of multiple perpetrators for killing in commission of other offense, see III.
- 569. — In general.
- 570. — Presence in general.

II. MURDER.(Cont'd)

- 571. — Aiding, abetting, or other participation in offense.
- 572. — Principals.
 - (1). In general.
 - (2). Principals in first degree.
 - (3). Principals in second degree.
- 573. — Accessories.
 - (1). In general.
 - (2). Accessories before the fact.
 - (3). Accessories after the fact.

III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT.

(A) IN GENERAL.

- 575. In general.
- 576. Constitutional and statutory provisions.

(B) MURDER.

Includes felony murder.

- 580. In general.
- 581. Intent or mens rea.
- 582. Predicate offenses or conduct.
Particular offenses or conduct, see ¶593.
- 583. — In general.
- 584. — Unlawful act in general.
- 585. — Felonies in general.
- 586. — Punishment authorized for offense in general.
- 587. — Dangerousness of offense in general.
- 588. — Causal relationship between offense and death.
- 589. — Temporal proximity of offense and death.
- 590. — Conduct inseparable from or included within homicide.
- 591. Victim's role, status, or participation in general.
Death of co-perpetrator, see ¶617.
- 592. Death caused by third person in general.
- 593. Particular offenses and conduct.
Issues involving multiple perpetrators, see ¶611.
- 594. — In general.
- 595. — Abortion.
- 596. — Arson.
- 597. — Assault or battery.
- 598. — Burglary or trespass.
- 599. — Conspiracy and racketeering.

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III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT.(Cont'd)

- 600. — Controlled substances.
- 601. — Escape.
- 602. — Homicide.
- 603. — Injuring or endangering child.
- 604. — Kidnapping.
- 605. — Larceny and other property offenses.
- 606. — Obstructing justice.
- 607. — Robbery.
- 608. — Sex offenses.
- 609. — Weapons offenses.
- 610. Attempt.
- 611. Multiple perpetrators.
- 612. — In general.
- 613. — Conspiring and planning.
- 614. — Aiding, abetting, or other participation in offense.
- 615. — Presence.
- 616. — Accessories before the fact.
- 617. — Death of co-perpetrator.

(C) MANSLAUGHTER.

- 620. In general.
- 621. Intent or mens rea.
- 622. Predicate offenses or conduct.
Particular offenses or conduct, see 634.
- 623. — In general.
- 624. — Unlawful act in general.
- 625. — Felonies in general.
- 626. — Misdemeanors in general.
- 627. — Punishment authorized for offense in general.
- 628. — Dangerousness of act in general.
- 629. — Causal relationship between act and death.
- 630. — Temporal proximity of act and death.
- 631. — Conduct inseparable from or included within homicide.
- 632. Victim's role, status, or participation in general.
Death of co-perpetrator, see 652.
- 633. Death caused by third person in general.
- 634. Particular offenses and conduct.
Issues involving multiple perpetrators, see 652.
- 634.5. — In general.
- 635. — Abortion.

III. HOMICIDE IN COMMISSION OF OR WITH INTENT TO COMMIT OTHER UNLAWFUL ACT.(Cont'd)

- 636. — Arson.
- 637. — Assault or battery.
- 638. — Burglary or trespass.
- 639. — Conspiracy and racketeering.
- 640. — Controlled substances.
- 641. — Escape.
- 642. — Homicide.
- 643. — Injuring or endangering child.
- 644. — Kidnapping.
- 645. — Larceny and other property offenses.
- 646. — Mutual combat.
- 647. — Obstructing justice.
- 648. — Robbery.
- 649. — Sex offenses.
- 650. — Weapons offenses.
- 651. Attempt.
- 652. Multiple perpetrators.

IV. MANSLAUGHTER.

Mental incapacity reducing murder to manslaughter, see 825. Manslaughter in commission of other offense or unlawful act, see III(C).

- 654. In general.
- 655. Constitutional and statutory provisions.
- 656. What constitutes manslaughter in general.
- 657. Murder and manslaughter compared and contrasted.
- 658. What constitutes voluntary manslaughter, in general.
- 659. What constitutes involuntary manslaughter, in general.
- 660. Voluntary and involuntary manslaughter compared and contrasted.
- 661. Degrees.
 - (1). In general.
 - (2). First degree or aggravated manslaughter.
 - (3). Second degree manslaughter.
 - (4). Third and lesser degrees of manslaughter.
- 662. Intent or mens rea in general.
Transferred intent, see 702.
- 663. Intent to kill.
Transferred intent, see 702.
- 664. Intent to injure.
Transferred intent, see 702.

203. HOMICIDE

IV. MANSLAUGHTER.(Cont'd)

- 665. Malice.
- 666. Sudden passion or heat of passion.
Extreme emotional disturbance or temporary insanity affecting grade or degree, see §828.
- 667. — In general.
- 668. — Passion as element or as factor affecting degree or grade of offense.
- 669. — Time for cooling.
- 670. Provocation.
- 671. — In general.
- 672. — Nature and adequacy in general.
- 673. — Sufficiency as cause of passion.
- 674. Mere language, or words alone.
- 675. Threatening language or conduct.
- 676. Insulting or defaming defendant.
- 677. Insulting or defaming third person.
- 678. Resisting unlawful act in general.
- 679. Assaulting or injuring defendant.
- 680. Assaulting or threatening third person.
- 681. Infidelity or unfaithfulness.
- 682. Trespass or injury to property.
- 683. Provocation created or incited by defendant.
- 684. Relation of provocation to killing.
- 685. Resistance of arrest or imprisonment.
- 686. Imperfect self-defense.
Includes claim of self-defense as reducing murder to manslaughter. Self-defense as justification, see VI(B).
- 687. — In general.
- 688. — Initial aggression by defendant.
- 689. — Withdrawal.
- 690. — Mutual combat.
- 691. — Nature of danger.
- 692. — Imminence or immediacy of danger.
- 693. — Apprehension of danger.
- 694. — Reasonableness of apprehension.
- 695. — Necessity of defendant's conduct.
- 696. — Amount of force.
- 697. — Duty to retreat or avoid danger.
- 698. — Renewal of altercation.
- 699. Nature of act causing death.
- 700. Means, instrument, or device employed.
- 701. Cause of death.
- 702. Killing one person with intent to kill or injure another; transferred intent.
- 703. Exercise of authority.
As excuse or justification, see VI(A).
- 704. — In general.

IV. MANSLAUGHTER.(Cont'd)

- 705. — Discipline or correction.
- 706. — Making arrest or preventing escape.
- 707. — Suppressing disturbance and preservation of peace.
- 708. Negligence.
- 709. Recklessness, wantonness, or extreme indifference.
- 710. Omission or failure to act.
- 711. Attempt.
- 712. — In general.
- 713. — Existence of crime.
- 714. — Intent or mens rea.
- 715. — Degrees.
- 716. Parties to offense.
- 717. — In general.
- 718. — Aiding, abetting, or other participation in offense.
- 719. — Principals.
- 720. — Accessories.

V. ASSAULT WITH INTENT TO KILL.

- 725. In general.
- 726. Constitutional and statutory provisions.
- 727. Intent or mens rea.
- 728. Malice.
- 729. Deliberation and premeditation.
- 730. Nature and character of act.
- 731. Assault on one person with intent to kill another; transferred intent.
- 732. Means, instrument, or device employed.
- 733. Ability to execute intent.
- 734. Actual injury and extent thereof.
- 735. Grade or degree of crime, had death ensued.
- 736. Threats to take life.
- 737. Attempt.
- 738. Parties to offense.
- 739. Excuses or justification in general.
See also VI(A).
- 740. Self-defense.
See also VI(B).
- 741. — In general.
- 742. — Necessity of act in general.
- 743. — Aggression and provocation of attack.
- 744. — Apprehension of danger.
- 745. Defense of another person.
See also §757.

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V. ASSAULT WITH INTENT TO KILL.(Cont'd)

746. Defense of property.

See also ⚭758.

747. Defense of dwelling or habitation.

See also ⚭759.

VI. EXCUSABLE OR JUSTIFIABLE HOMICIDE.

(A) IN GENERAL.

Defenses in general, see CRIMINAL LAW II.

750. In general.

751. Constitutional and statutory provisions.

752. Preservation of peace and order in general.

753. Prevention of commission of crime.

754. Making arrest.

755. Prevention of escape.

756. Obedience to official or person in apparent authority.

757. Defense of another person.

758. Defense of property.

759. Defense of dwelling or habitation.

760. — In general.

761. — Duty to retreat or avoid danger.

762. Accident or misfortune.

763. Compulsion, necessity, or duress.

See also CRIMINAL LAW ⚭38.

764. Matters of philosophy and ideology.

765. Euthanasia and mercy-killing.

(B) SELF-DEFENSE.

Assault with intent to kill, see ⚭740. *Imperfect self-defense reducing murder to manslaughter, see* ⚭686.

766. In general.

767. Conduct or circumstances provoking use of force.

768. — In general.

769. — Necessity of use of force.

770. — Assault or attack on accused.

771. — Threats.

772. — Weapons.

773. Aggression or provocation by accused.

774. — In general.

775. — Intent of accused.

776. — Conduct constituting aggression or provocation in general.

777. — Insulting, abusive, or opprobrious language.

778. — Threats.

779. — Assault, attack, or other hostile behavior.

780. — Weapons.

VI. EXCUSABLE OR JUSTIFIABLE HOMICIDE.(Cont'd)

781. — Lawful conduct.

782. — Relation between aggression or provocation and response.

783. Withdrawal after aggression.

Duty to retreat, see ⚭798.

784. Mutual or voluntary conduct.

785. Danger.

786. — In general.

787. — Real or apparent danger.

788. — Circumstances and events constituting danger.

789. — Imminence or immediacy of danger.

790. — Threats.

791. — Weapons.

792. Apprehension of danger.

793. — In general.

794. — Actual belief in or apprehension of danger.

795. — Reasonableness of belief or apprehension.

796. — Threats.

797. — Weapons.

798. Duty to retreat or avoid danger.

799. — In general.

800. — Conduct or circumstances creating danger.

801. — Place or situation of confrontation.

802. — Confrontation on accused's own premises.

803. — Confrontation when accused is exercising legal right.

804. — Weapons.

805. Resistance of arrest.

806. Manner or means of self-defense.

807. — In general.

808. — Excessive force.

809. Pursuit of adversary and renewal of conflict.

VII. CAPACITY TO COMMIT CRIME.

See also CRIMINAL LAW VI.

815. In general.

816. Diminished capacity in general.

Affecting grade or degree of offense, see ⚭826.

817. Insanity.

818. Extreme emotional disturbance or distress; temporary insanity.

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VII. CAPACITY TO COMMIT CRIME.(Cont'd)

- 819. Mental retardation.
- 820. Intoxication.
- 821. — In general.
- 822. — Drugs and controlled substances.
- 823. — Involuntary intoxication.
- 824. — Insanity resulting from abuse of alcohol or drugs.
- 825. Mental incapacity affecting grade or degree of offense.
- 826. — In general.
- 827. — Insanity.
- 828. — Extreme emotional disturbance or distress; temporary insanity.
- 829. — Intoxication.

VIII. INDICTMENT AND INFORMATION.

See also INDICTMENT AND INFORMATION.

- 830. In general.
- 831. Specification of grade, degree, or classification of offense.
- 832. Murder in general.
- 833. Manslaughter in general.
- 834. Intent or mens rea.
Transferred intent, see 853.
- 835. Malice.
- 836. Recklessness, wantonness, or extreme indifference.
- 837. Deliberation and premeditation.
- 838. Motive.
- 839. Act or omission of accused.
- 840. Injury or condition causing death.
- 841. Means, instrument, or device, and use thereof.
- 842. — In general.
- 843. — Necessity of allegation in general.
- 844. — Sufficiency of allegation.
- 845. — Weapons.
- 846. — Poisons.
- 847. — Means or device unknown.
- 848. Occurrence, time, and place of death.
Time of offense, see INDICTMENT AND INFORMATION 87. Place of offense, see INDICTMENT AND INFORMATION 86.
- 849. Passion and provocation.
- 850. Killing in commission of, or with intent to commit, other unlawful act.
- 851. Solicitation to kill.
- 852. Attempt.
- 853. Transferred intent.

VIII. INDICTMENT AND INFORMATION.(Cont'd)

- 854. Parties to offense.
Designation and description of accused, see INDICTMENT AND INFORMATION 81. Designation of victim, see INDICTMENT AND INFORMATION 101.
- 855. Assault with intent to kill.
- 856. — In general.
- 857. — Intent.
- 858. — Malice.
- 859. — Deliberation and premeditation.
- 860. — Nature and character of act.
- 861. — Assault on one person with intent to kill another.
- 862. — Means, instrument, or device employed in general.
- 863. — Description or characterization of instrument.
- 864. — Injury inflicted.
- 865. — Grade or degree of crime, had death ensued.
- 866. — Attempts.
- 867. — Parties to offense.
- 868. Threats to take life.
- 869. Issues in general.
- 870. Matters to be proved under accusation.
- 871. Variance between accusation and proof.
- 872. — In general.
- 873. — Grade, degree, or classification of offense.
- 874. — Multiple perpetrators.
- 875. — Multiple victims.
- 876. — Act or omission of accused.
- 877. — Means, instrument, or device, and use thereof.
- 878. — Injury inflicted.
- 879. — Cause of death.
- 880. — Transferred intent.
- 881. — Parties to offense.

IX. EVIDENCE.

Evidence in criminal trials in general, see CRIMINAL LAW. Witnesses, including their competency, examination, and credibility, see WITNESSES.

(A) IN GENERAL.

- 900. In general.
- 901. Constitutional and statutory provisions.

(B) PRESUMPTIONS AND INFERENCES.

See also CRIMINAL LAW XVII(B).

- 905. In general.
- 906. Corpus delicti.
- 907. Elements of offense in general.

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IX. EVIDENCE.(Cont'd)

- 908. Intent or mens rea.
- 909. Malice.
- 910. Deliberation and premeditation.
- 911. Motive.
- 912. Passion or provocation.
- 913. Personal and familial relations.
- 914. Cause of death.
- 915. Grade, degree, or classification of offense.
- 916. Commission of or participation in act by accused; identity.
- 917. Matters of defense in general.
- 918. Excuse or justification.
- 919. — In general.
- 920. — Self-defense.
- 921. — Defense of another person.
- 922. — Accident or misfortune.
- 923. — Compulsion, necessity, or duress.
- 924. Capacity to commit crime in general.
- 925. Insanity.
- 926. Intoxication.

(C) BURDEN OF PROOF.

See also CRIMINAL LAW XVII(C).

- 928. In general.
- 929. Corpus delicti.
- 930. Elements of offense in general.
- 931. Intent or mens rea.
- 932. Malice.
- 933. Deliberation and premeditation.
- 934. Motive.
- 935. Cause of death.
- 936. Grade, degree, or classification of offense.
- 937. Commission of or participation in act by accused; identity.
- 938. Passion or provocation.
- 939. Matters of defense in general.
- 940. Excuse or justification.
- 941. — In general.
- 942. — Self-defense.
- 943. — Defense of another person.
- 944. — Accident or misfortune.
- 945. — Compulsion, necessity or duress.
- 946. Capacity to commit crime in general.
- 947. Insanity.
- 948. Intoxication.

(D) ADMISSIBILITY IN GENERAL.

Admissions, declarations, and confessions, see also CRIMINAL LAW. Opinion evidence, including expert opinion, see CRIMINAL LAW. Other offenses, see also CRIMINAL LAW. Reception of evidence, procedure concerning, see CRIMINAL LAW. Res gestae and excited utterances, see CRIMINAL LAW XVII(E). Wrongfully obtained evidence, see CRIMINAL LAW.

- 950. In general.
- 951. Corpus delicti.
- 952. Ability and opportunity.
- 953. Circumstances preceding act.
To show intent, malice, or premeditation, see ¶985.
- 954. — In general.
- 955. — Matters related to facts in evidence.
- 956. — Previous difficulties and surrounding circumstances.
- 957. — Circumstances of conspiracy or concerted action.
- 958. — Other misconduct part of course of conduct.
- 959. — Declarations of accused.
- 960. — Declarations of victim.
- 961. — Declarations of third person.
- 962. — Remoteness.
- 963. Preparations or planning.
To show intent, malice, or premeditation, see ¶991.
- 964. Prior attempts.
- 965. Threats in general.
- 966. Threats by accused.
To show intent, malice, or premeditation, see ¶989. Subsequent to offense, see ¶1018.
- 967. — In general.
- 968. — Indefinite, impersonal, and conditional threats.
- 969. — Threats against a class.
- 970. — Threats against third person.
- 971. — Remoteness.
- 972. Threats by victim.
On issue of self-defense, see ¶1053.
- 973. Threats by third person.
Incriminating others, see ¶1038.
- 974. Nature of act and attendant circumstances in general.
To show intent, malice, or premeditation, see ¶992.
- 975. — In general.
- 976. — Physical conditions.
- 977. — Other misconduct.
- 978. — Declarations of accused.
- 979. — Declarations of victim.
- 980. — Declarations of third person.

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IX. EVIDENCE.(Cont'd)

- 981. Commission of or attempt to commit other offense or unlawful act.
- 982. Means, instrument, or device employed.
Possession by accused subsequent to crime, see *§1020.*
- 983. Identity and presence of accused.
- 984. Identity and status of victim.
- 985. Intent, malice, deliberation, and premeditation.
Motive, see *§1000.*
- 986. — In general.
- 987. — Declarations and statements.
- 988. — Previous quarrels and ill feeling.
 - (1). In general.
 - (2). Circumstances of previous difficulty.
 - (3). Difficulties involving third person.
 - (4). Difficulties involving spouses, cohabitants, or paramours.
 - (5). Remoteness.
- 989. — Previous threats and expressions of ill will by accused.
 - (1). In general.
 - (2). Indefinite, impersonal, and conditional threats.
 - (3). Threats against third person.
 - (4). Remoteness.
- 990. — Previous hostile acts or conduct of accused.
- 991. — Preparations.
- 992. — Nature and circumstances of act.
- 993. Commission of or participation in act by accused in general.
- 994. Character and habits.
- 995. — In general.
- 996. — Accused.
- 997. — Victim.
On issue of self-defense, see *§1051.*
- 998. Physical condition of parties.
- 999. Personal relations of parties.
- 1000. Motive.
- 1001. — In general.
- 1002. — Disagreement and animosity.
- 1003. — Avoiding arrest or prosecution; escape.
- 1004. — Prosecutor or witness in other proceeding as victim.
- 1005. — Discord between spouses or cohabitants.

IX. EVIDENCE.(Cont'd)

- 1006. — Infidelity, unfaithfulness, or jealousy.
- 1007. — Relationship between defendant and victim's spouse.
- 1008. — Pecuniary motive.
- 1009. — Burglary or robbery.
- 1010. — Inheritance.
- 1011. — Collection of insurance.
- 1012. Subsequent incriminating or exculpatory circumstances.
See also CRIMINAL LAW *§351.*
- 1013. — In general.
- 1014. — Physical conditions.
- 1015. — Mental state or demeanor of accused.
- 1016. — Statements by accused.
- 1017. — Statements by third person.
- 1018. — Subsequent threats or attempts by accused.
- 1019. — Possession of money or property similar to that of victim.
- 1020. — Possession and condition of weapons and other physical objects.
- 1021. — Flight or refusal to flee.
- 1022. — Resisting or avoiding arrest.
- 1023. — Concealment of identity.
- 1024. — Suicide attempt.
- 1025. — Silence.
- 1026. — Subornation of witnesses or jurors.
- 1027. — Fabrication of evidence.
- 1028. — Escape, escape attempts, and escape opportunity declined.
- 1029. — Suppression or destruction of evidence.
- 1030. — Misrepresentations to avoid suspicion or cast suspicion on others.
- 1031. Cause of death.
- 1031.5. Suicide.
Includes evidence to show that victim committed suicide. Suicide attempt by accused to show consciousness of guilt, see *§1024.*
- 1032. Extent of injuries from assault with intent to kill.
- 1033. Incriminating others.
See also CRIMINAL LAW *§359.*
- 1034. — In general.
- 1035. — Presence at scene.
- 1036. — Declarations of third person.

203. HOMICIDE

IX. EVIDENCE.(Cont'd)

- 1037. — Motive for others to commit crime.
- 1038. — Threats by third person.
- 1039. Capacity to commit crime.
Expert testimony, see CRIMINAL LAW §474-474.2.
- 1040. — In general.
- 1041. — Insanity.
- 1042. — Mental retardation.
- 1043. — Intoxication.
- 1044. Passion or provocation.
- 1045. Lawfulness of victim's conduct, and response by accused.
- 1046. Excuse or justification in general.
- 1047. Exercise of authority or duty.
- 1048. Prevention of commission of offense in general.
- 1049. Self-defense.
- 1050. — In general.
- 1051. — Character and habits of victim.
 - (1). In general.
 - (2). Knowledge of defendant as to victim's character.
 - (3). Necessity of claim or showing of self-defense.
 - (4). Sufficiency of showing of self-defense.
 - (5). Manner of proving character or habits.
 - (6). Habit of carrying weapons.
 - (7). Admissibility on behalf of prosecution.
- 1052. — Previous quarrels and ill feeling.
- 1053. — Previous threats by victim.
 - (1). In general.
 - (2). Admissibility where defendant was the aggressor.
 - (3). Necessity of claim or showing of self-defense.
 - (4). Sufficiency of showing of self-defense.
 - (5). Remoteness of threats.
 - (6). Impersonal, conditional and indirect threats.
 - (7). Uncommunicated threats.
 - (8). Communicated threats.
 - (9). Evidence as to communication.
 - (10). Rebuttal of evidence of threats.
- 1054. — Previous hostile acts or conduct of victim.

IX. EVIDENCE.(Cont'd)

- 1055. — Aggression or provocation by accused.
- 1056. — Possession and use of weapons by victim.
- 1057. — Nature and circumstances of act.
- 1058. — Imminence and apprehension of danger to accused.
- 1059. — Reasonableness of apprehension.
- 1060. — Manner or means of self-defense in general.
- 1061. — Excessive force.
- 1062. Defense of another person.
- 1063. Defense of property.
- 1064. Defense of dwelling or habitation.
- 1065. Accident or misfortune.
- 1066. Compulsion, necessity, or duress.

(E) DYING DECLARATIONS.

Declarations by persons since deceased as hearsay, see CRIMINAL LAW §419. Res gestae or excited utterances, see CRIMINAL LAW XVII(E).

- 1075. In general.
- 1076. Grounds of admissibility in general.
- 1077. Condition of declarant.
- 1078. — In general.
- 1079. — Danger and imminence of death.
- 1080. — Sense of impending death.
 - (1). In general.
 - (2). Necessity that declaration be made under sense of impending death.
 - (3). Necessity of statement by deceased as to belief in impending death.
 - (4). Sufficiency of showing in general.
 - (5). Expression of despair.
 - (6). Hopes and expectation of recovery by deceased.
 - (7). Hopes and assurances of others.
 - (8). Belief as to imminence of death.
- 1081. — Time intervening before death.
- 1082. Circumstances surrounding declaration.
- 1083. Making and form of declaration.
- 1084. — In general.
- 1085. — Declarations under oath.
- 1086. — Written declarations.
- 1087. Ratification of previous declaration.
- 1088. Statements favorable to accused.
- 1089. Competency of declarant as witness.

203. HOMICIDE

IX. EVIDENCE.(Cont'd)

- 1090. Subject-matter and relevancy.
 - (1). In general.
 - (2). Necessity that declaration be confined to circumstances of killing.
 - (3). Relevancy to homicidal act.
- 1091. Competency of declaration as evidence.
 - (1). In general.
 - (2). Completeness.
 - (3). Definiteness and certainty.
 - (4). Conclusions and opinions.
- 1092. Preliminary evidence.
Whether evidence shows sense of impending death, see *1080.*
- 1093. Method of proof.
- 1094. Determination of admissibility.
- 1095. Credibility and impeachment.
- 1096. Contradiction and corroboration.
- 1097. Effect.

(F) PROCEEDINGS AT INQUEST.

Includes admissibility and effect of proceedings at inquest in homicide trial. Necessity and conduct of inquest as to cause of death, see CORONERS 9.

- 1110. In general.
- 1111. Admissibility in general.
- 1112. Testimony of witnesses.
- 1113. Testimony and statements of accused.
- 1114. Verdict and inquisition.
- 1115. Method of proof.
- 1116. Effect.

(G) WEIGHT AND SUFFICIENCY.

- 1125. In general.
- 1126. Corpus delicti.
- 1127. — In general.
- 1128. — Sufficiency of circumstantial evidence.
- 1129. — Necessity that body be found.
- 1130. — Degree of proof.
- 1131. — Infanticide cases.
- 1132. — Place.
- 1133. Homicide in general.
- 1134. — In general.
- 1135. — Intent or mens rea.
- 1136. — Malice.
- 1137. — Deliberation and premeditation.
- 1138. First degree, capital, or aggravated murder.
- 1139. — In general.

IX. EVIDENCE.(Cont'd)

- 1140. — Sufficiency of circumstantial evidence in general.
- 1141. — Intent or mens rea.
- 1142. — Malice.
- 1143. — Deliberation and premeditation.
- 1144. — Atrocity or cruelty.
- 1145. — Nature of instrument or device used.
- 1146. Second degree murder.
- 1147. Third and lesser degrees of murder.
- 1148. Manslaughter in general.
- 1149. Voluntary manslaughter.
- 1150. Involuntary manslaughter.
- 1151. Degrees of manslaughter.
- 1152. Passion or provocation.
- 1153. Assault with intent to kill.
- 1154. — In general.
- 1155. — Intent; mens rea.
- 1156. — Showing as to grade of offense had death ensued.
- 1157. — Circumstantial evidence in general.
- 1158. — Miscellaneous particular circumstances.
- 1159. — False and improbable statements accompanied by other evidence.
- 1160. — Threats accompanied by other evidence.
- 1161. — Deadly character of assault.
- 1162. Homicide in commission of or with intent to commit other unlawful act.
- 1163. — In general.
- 1164. — Intent or mens rea.
- 1165. — Predicate offenses or conduct.
- 1166. — Relation between predicate offense or conduct and homicide.
- 1167. — Multiple perpetrators.
- 1168. Attempt.
- 1169. Solicitation to kill.
- 1170. Threats to kill.
- 1171. Transferred intent.
- 1172. Identity of victim.
- 1173. Motive.
- 1174. Cause of death.
- 1175. Time of death.
- 1176. Commission of or participation in act by accused; identity.
- 1177. — In general.

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IX. EVIDENCE.(Cont'd)

- 1178. — Testimony of co-perpetrator.
- 1179. — Altercation or attack by several.
- 1180. — Participation in crime committed by another.
- 1181. — Eyewitness identification.
- 1182. — Identification by victim.
- 1183. — Circumstantial evidence in general.
- 1184. — Miscellaneous particular circumstances.
- 1184.5. — Presence at scene of crime.
- 1185. — Motive.
- 1186. — Confessions and declarations.
- 1187. — False and improbable statements.
- 1188. — Threats and expressions of ill will.
- 1189. Excuse or justification in general.
- 1190. Exercise of authority or duty.
- 1191. Prevention of commission of offense in general.
- 1192. Self-defense.
- 1193. — In general.
- 1194. — Degree of proof in general.
- 1195. — Aggression or provocation by accused.
- 1196. — Mutual combat.
- 1197. — Nature and imminence of danger.
- 1198. — Apprehension of danger.
- 1199. — Duty to retreat or avoid danger.
- 1200. — Amount of force.
- 1201. — Defendant's statement alone and affected by other evidence.
- 1202. Defense of another.
- 1203. Defense of property.
- 1204. Defense of dwelling or habitation.
- 1205. Accident or misfortune.
- 1206. Compulsion, necessity, or duress.
- 1207. Parties to offense.
- 1208. Capacity to commit crime.
- 1209. — In general.
- 1210. — Insanity.
- 1211. — Extreme emotional disturbance or distress; temporary insanity.
- 1212. — Mental retardation.
- 1213. — Intoxication.

X. TRIAL IN GENERAL.

Course and conduct of proceedings at criminal trials, see CRIMINAL LAW XX.

- 1300. In general.

X. TRIAL IN GENERAL.(Cont'd)

- 1301. Exhumation and examination of body of deceased.

XI. QUESTIONS OF LAW OR FACT.

- 1319. In general.
- 1320. Elements of offense in general.
- 1321. Murder in general.
- 1322. Homicide in commission of or with intent to commit other unlawful act in general.
- 1323. Manslaughter in general.
- 1324. Assault with intent to kill in general.
- 1325. Intent or mens rea.
- 1326. Malice.
- 1327. Recklessness, wantonness, or extreme indifference.
- 1328. Deliberation and premeditation.
- 1329. Passion or provocation.
- 1330. Cause of death.
- 1331. Commission of or participation in offense by accused; identity.
- 1332. Parties to offenses.
- 1333. Grade, degree, or classification of offense.
- 1334. Solicitation to kill.
- 1335. Attempts.
- 1336. Excuse or justification in general.
- 1337. Preservation of peace in general.
- 1338. Prevention of commission of crime.
- 1339. Making arrest or preventing escape.
- 1340. Defense of another person.
- 1341. Defense of property.
- 1342. Defense of dwelling or habitation.
- 1343. Accident or misfortune.
- 1344. Compulsion, necessity, or duress.
- 1345. Self-defense in general.
- 1346. Threats or hostile conduct by victim.
- 1347. Aggression or provocation by accused.
- 1348. Danger and apprehension thereof.
- 1349. Manner or means of self-defense.
- 1350. Capacity to commit crime in general.
- 1351. Insanity.
- 1352. Intoxication.
- 1353. Extreme emotional disturbance or distress; temporary insanity.
- 1354. Mental retardation.

203. HOMICIDE

XII. INSTRUCTIONS.

Instructions to juries in general, see CRIMINAL LAW XX.

(A) IN GENERAL.

- 1360. In general.
- 1361. Constitutional and statutory provisions.
- 1362. Corpus delicti.

(B) NECESSITY AND SUFFICIENCY.

Necessity of instructions on lesser, other, or alternative offenses or degrees, see XII(C).

- 1370. In general.
- 1371. Murder in general; definitions.
- 1372. Manslaughter in general; definitions.
- 1373. Assault with intent to kill in general; definitions.
- 1374. Grade, degree or classification of offense.
- 1375. — In general.
- 1376. — Characterization or definition of degree in general.
- 1377. — First degree, capital, or aggravated murder.
- 1378. — Second degree murder.
- 1379. — Murder of third or lesser degree.
- 1380. — Manslaughter in general.
- 1381. — First degree manslaughter.
- 1382. — Second degree manslaughter.
- 1383. — Manslaughter of third or lesser degree.
- 1384. — Assault with intent to kill.
- 1385. Passion or provocation.
- 1386. Intent or mens rea.
- 1387. — In general.
- 1388. — Presumptions and inferences.
- 1389. — Transferred intent.
- 1390. Malice.
- 1391. — In general.
- 1392. — Presumptions and inferences.
- 1393. Recklessness, wantonness, or extreme indifference.
- 1394. Deliberation and premeditation.
- 1395. — In general.
- 1396. — Time.
- 1397. — Presumptions and inferences.
- 1398. Motive.
- 1399. Nature of act or omission and attendant circumstances.
- 1400. Cause of death.

XII. INSTRUCTIONS.(Cont'd)

- 1401. Means, instrument, or device, and use thereof.
- 1402. Mutual combat, sudden affray, or duel.
- 1403. Public employees and officials as victims.
- 1404. Attempt.
- 1405. Solicitation to kill.
- 1406. Murder for hire; contract killing.
- 1407. Threats to take life.
- 1408. Killing in commission of or with intent to commit other unlawful act.
- 1409. — In general.
- 1410. — Intent or mens rea in general.
- 1411. — Arson.
- 1412. — Assault or battery.
- 1413. — Burglary or trespass.
- 1414. — Conspiracy and racketeering.
- 1415. — Controlled substances.
- 1416. — Escape.
- 1417. — Homicide.
- 1418. — Injuring or endangering child.
- 1419. — Kidnapping.
- 1420. — Larceny and other property offenses.
- 1421. — Robbery.
- 1422. — Sex offenses.
- 1423. — Weapons offenses.
- 1424. — Other particular offenses.
- 1425. — Multiple perpetrators.

(C) NECESSITY OF INSTRUCTION ON OTHER GRADE, DEGREE, OR CLASSIFICATION OF OFFENSE.

Excludes assault or battery as included offense, see ASSAULT AND BATTERY §96. Effect of doubt as to grade or degree, see CRIMINAL LAW §795(4). Effect of defendant's objection or defense inconsistent with lesser charge, see CRIMINAL LAW §795(2.90). Sufficiency of instructions, see XII(B).

- 1450. In general.
- 1451. Evidence justifying or requiring instruction on other degree or offense in general.
- 1452. Necessity in absence of evidence of other degree or offense in general.
- 1453. Necessity when evidence shows degree charged in general.
- 1454. Reasonable or rational basis in general.
- 1455. Some, any, slight, or weak evidence in general.
- 1456. Degree or classification of homicide.

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XII. INSTRUCTIONS.(Cont'd)

- 1457. Manslaughter.
- 1458. Degree or classification of manslaughter.
- 1459. Assault with intent to kill.
- 1460. Attempt.
- 1461. Solicitation to kill; contract killing.
- 1462. Threats to take life.

(D) PARTIES.

- 1465. In general.
- 1466. Aiding, abetting, or other participation in offense.
- 1467. Principals.
- 1468. Accessories.

(E) EXCUSES AND JUSTIFICATIONS.

- 1470. In general.
- 1471. Self-defense.
- 1472. — In general.
- 1473. — Necessity of instruction in general.
- 1474. — Necessity in absence of evidence of self-defense in general.
- 1475. — Necessity when evidence shows contrary in general.
- 1476. — Necessity when there is some, any, slight, or weak evidence of self-defense in general.
- 1477. — Requisites and sufficiency in general.
- 1478. — Conduct or circumstances surrounding incident.
- 1479. — Threats or hostile conduct by victim.
- 1480. — Aggression or provocation by accused.
- 1481. — Withdrawal after aggression.
- 1482. — Mutual combat.
- 1483. — Danger and imminence thereof.
- 1484. — Apprehension of danger.
- 1485. — Duty to retreat or avoid danger.
- 1486. — Resistance of arrest or other legal process.
- 1487. — Manner or means of self-defense; excessive force.
- 1488. — Effect of defendant's objection or of incompatible defense evidence.
- 1489. Defense of another person.
- 1490. Defense of property.

XII. INSTRUCTIONS.(Cont'd)

- 1491. Defense of dwelling or habitation.
- 1492. Accident or misfortune.
- 1493. Compulsion, necessity, or duress.

(F) CAPACITY TO COMMIT CRIME.

- 1500. In general.
- 1501. Diminished capacity.
- 1502. Insanity.
- 1503. Extreme emotional disturbance or distress; temporary insanity.
- 1504. Mental retardation.
- 1505. Intoxication.
- 1506. — In general.
- 1507. — Involuntary intoxication.

XIII. VERDICT.

See also CRIMINAL LAW XX(K).

- 1550. In general.
- 1551. Form and requisites in general.
- 1552. Specification of grade or degree of offense.
- 1553. — Necessity in general.
- 1554. — When indictment charges degree or sets forth facts showing it.
- 1555. — Sufficiency.
- 1556. — Assessment of punishment as finding of degree.
- 1557. Assessment of punishment.
Death penalty, see SENTENCING AND PUNISHMENT §1784.
- 1558. Construction and operation.

XIV. SENTENCE AND PUNISHMENT.

Death penalty, see SENTENCING AND PUNISHMENT VIII. Reconsideration and modification of sentence, see SENTENCING AND PUNISHMENT XII.

- 1560. In general.
- 1561. Constitutional and statutory provisions.
- 1562. — In general.
- 1563. — Validity.
- 1564. — Retroactive operation.
- 1565. Extent of punishment in general.
- 1566. — In general.
- 1567. — Murder.
- 1568. — Manslaughter.
- 1569. — Assault with intent to kill.
- 1570. Life sentence.
- 1571. — In general.
- 1572. — Murder.

205H. IMPLIED AND CONSTRUCTIVE CONTRACTS

XIV. SENTENCE AND PUNISHMENT.(Cont'd)

1573. — Manslaughter.
1574. — Assault with intent to kill.

205H. IMPLIED AND CONSTRUCTIVE CONTRACTS

SUBJECTS INCLUDED

Obligations implied or imposed by law generally, and particularly the following obligations

To repay money lent or advanced for temporary accommodation and use, independent of any instrument in writing promising such repayment

To repay money paid or expended by one person, for the use or benefit of another who ought to have paid it, to a third person, independent of any instrument in writing requesting such payment or promising repayment

To pay money received by one person, for the use or benefit of another, or to which another is entitled in equity and good conscience, independent of any special relation, agreement, or trust

To pay for use of real property of another, occupied by his permission, independent of any lease or agreement reserving or fixing a sum to be paid as rent

To pay for services rendered and materials furnished incident to the services, independent of any special relation or of any employment or promise to pay therefor

Rights, liabilities, and remedies of the parties in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agreements, express or implied, for hiring of services—

For specific work, see **CONTRACTS**

Employment generally, see **LABOR AND EMPLOYMENT**

Interest on loans, see **INTEREST, USURY**

Assumpsit, proceedings in action of, see **ASSUMPSIT, ACTION OF**

Money or property received in representative or fiduciary capacity, see **GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, ATTORNEY AND CLIENT, PRINCIPAL AND AGENT**, and other specific topics

Partial reimbursement of amount paid to discharge a common obligation, see **CONTRIBUTION**

Particular classes of persons, personal relations or occupations, services rendered by or incident to, see **ATTORNEY AND CLIENT, HEALTH**, and other specific topics

Promissory notes and other instruments in writing given for loans of money, see **BILLS AND NOTES**

Recovery of payments on executed contracts where no obligation to pay existed, but by fraud, mistake, duress, or other cause payment has been made, see **PAYMENT**

Rent, rights, and liabilities, see **LANDLORD AND TENANT**

Sale, implied, see **SALES**

Trusts, implied and constructive, see **TRUSTS**

I. NATURE AND GROUNDS OF OBLIGATION, ¶1-74.

- (A) IN GENERAL, ¶1-9.
(B) MONEY RECEIVED, ¶10-29.
(C) SERVICES RENDERED, ¶30-54.
(D) EFFECT OF EXPRESS CONTRACT, ¶55-69.
(E) DEFENSES AND PERSONS ENTITLED OR LIABLE, ¶70-74.

II. ACTIONS, ¶75-124.

- (A) IN GENERAL, ¶75-79.
(B) PLEADING, ¶80-89.
(C) EVIDENCE, ¶90-109.
(D) AMOUNT OF RECOVERY, ¶110-119.
(E) TRIAL AND JUDGMENT, ¶120-124.

I. NATURE AND GROUNDS OF OBLIGATION.

(A) IN GENERAL.

1. Contracts implied in general.
2. Constructive or quasi contracts.
 - 2.1. — In general.
3. — Unjust enrichment.

205H. IMPLIED AND CONSTRUCTIVE CONTRACTS

I. NATURE AND GROUNDS OF OBLIGATION.(Cont'd)

4. — Restitution.
5. Money lent.
6. Money paid.
7. Use and occupation of realty.

(B) MONEY RECEIVED.

See also PAYMENT.

10. In general.
11. Money or equivalent thereof.
12. Property other than money or proceeds thereof.
13. Nature of right.
14. Privity between parties.
15. Consideration or purpose for which money was received.
- 15.1. — In general.
16. — Necessity of actual reception by defendant.
17. — Proceeds of property converted by defendant.
18. — Failure of consideration by breach or rescission of contract or otherwise.
19. — Reception by defendant under promise or duty to pay plaintiff.
20. — Reception by defendant for special purpose not carried out.
21. — Double payment received by defendant.
22. — Reception by defendant by mistake.
23. Reception under claim of right.
24. Money wrongfully obtained.
25. Money received from third person.

(C) SERVICES RENDERED.

30. Work and labor in general; quantum meruit.
31. Materials furnished.
32. Expenses incurred.
33. Rendition and acceptance of services in general.
- 33.1. — In general.
34. — Implication of request or promise to pay.
35. — Effect of request or promise to pay.
36. — Fraud, mistake, or compulsion.
37. — Services rendered under agreement or direction of agent.

I. NATURE AND GROUNDS OF OBLIGATION.(Cont'd)

38. Consideration or purpose for which services were rendered.
- 38.1. — In general.
39. — Gratuitous services.
40. Relations between parties in general.
41. Services between persons in family relation.
- 41.1. — In general.
42. — Parent and child.
43. — Parent and son-in-law or daughter-in-law.
44. — Parent and stepchild.
45. — Foster parent and child.
46. — Brothers and sisters.
47. — Cohabitants.
48. — Uncle or aunt and nephew or niece.

(D) EFFECT OF EXPRESS CONTRACT.

55. In general.
56. Contract to lend money.
57. Contract to reimburse for money paid.
58. Lease or agreement for use or occupation.
59. Contract to pay over or repay money received.
60. Contract for services.
- 60.1. — In general.
61. — Contract invalid or unenforceable.
62. — Contract not fixing amount of compensation.
63. — Performance not according to terms of contract.
64. — Performance of additional or extra work.
65. — Part performance where contract is rescinded or abandoned and full performance is prevented.

(E) DEFENSES AND PERSONS ENTITLED OR LIABLE.

70. Defenses.
71. Persons entitled.
72. Persons liable.

II. ACTIONS.

(A) IN GENERAL.

75. In general.
76. Parties.

207. INCEST

(B) PLEADING.

- 80. In general.
- 81. Declaration, complaint, or petition.
- 82. Plea, answer, and subsequent pleadings.
- 83. Issues, proof, and variance.
- 83.1. — In general.
- 84. — Evidence admissible under pleadings.

(C) EVIDENCE.

- 90. In general.
- 91. Presumptions and burden of proof.
- 92. Admissibility in general.
- 93. Services rendered, admissibility.
- 93.1. — In general.
- 94. — Gratuitous services and relations between parties.
- 95. — Amount of compensation and value of services.
- 96. — Special contract.
- 97. — Skill used and sufficiency of performance.
- 98. Weight and sufficiency in general.
- 99. Services rendered, weight and sufficiency.
- 99.1. — In general.
- 100. — Nature of employment and promise to pay.
- 101. — Persons in family relation, services between.
- 102. — Amount of compensation and value of services.
- 103. — Special contract.
- 104. — Skill used and sufficiency of performance.

(D) AMOUNT OF RECOVERY.

- 110. In general.
- 111. Effect of express contract.
- 112. Inadequate and excessive allowances.

(E) TRIAL AND JUDGMENT.

- 120. In general.
- 121. Questions for jury.
- 122. Instructions.
- 123. Verdict and findings.
- 124. Judgment.

206. IMPROVEMENTS

SUBJECTS INCLUDED

Rights and liabilities arising from the making of improvements on real property by others than the owners of the soil

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Particular classes of actions, allowances and other remedies in respect of improvements, under occupying claimants' acts or otherwise, see EJECTMENT, PARTITION, TRESPASS TO TRY TITLE and other specific topics

Fixtures, improvements as, see FIXTURES

- 1. Nature and effect of making in general.
- 2. Statutory provisions.
- 3. Ownership.
- 4. Compensation.
 - (1). In general.
 - (2). Good faith of claimant.
 - (3). Mistake as to boundary or location of lands.
 - (4). Lien.
 - (5). Amount of recovery.
 - (6). Actions.

207. INCEST

SUBJECTS INCLUDED

Sexual intercourse between persons related to each other within such degrees that marriage between them is prohibited by law

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Capacity to marry, see MARRIAGE AND COHABITATION

- 1. Nature of offense in general.

207. INCEST

2. Statutory provisions.
3. Elements of offenses.
4. — In general.
5. — Relationship, and knowledge thereof.
6. — Criminal intercourse.
7. — Consent of parties and use of force.
8. Defenses.
- 8.5. Persons liable.
9. Indictment or information.
- 9.1. — In general.
10. — Requisites and sufficiency.
11. — Issues, proof, and variance.
12. Evidence.
- 12.1. — In general.
13. — Admissibility.
14. — Weight and sufficiency in general.
15. — Corroboration of testimony of female.
16. Trial.

208. INDEMNITY

SUBJECTS INCLUDED

Contracts, express or implied, to make good or compensate for loss or damage, sustained or anticipated, from acts or omissions of others as well as those of the persons indemnified, or to protect against claims of or liabilities to third persons

Nature, requisites, validity, incidents, construction, operation and effect of such contracts in general

Bonds and other instruments in writing promising such indemnity

Rights, liabilities and remedies of the parties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contracts of—

Guaranty, see GUARANTY

Insurance, see INSURANCE

Suretyship, see PRINCIPAL AND SURETY

Contribution, liability imposed by law rather than by contract for reimbursement, see CONTRIBUTION

Employee benefit plan or pension plan fiduciaries, indemnity for liabilities for breach of duty, see LABOR AND EMPLOYMENT ¶664

Environmental response and cleanup statutes, indemnity under, see ENVIRONMENTAL LAW

Frauds, statute of, requirements, see FRAUDS, STATUTE OF

Mortgages given as indemnity, see CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST

Particular classes of persons, contracts of indemnity by, see INFANTS, MENTAL HEALTH, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP and other specific topics

Particular officers and other persons, rights to demand indemnity, and matters relating only to indemnity given to any of them, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS, PUBLIC EMPLOYMENT and other specific topics

Veterans Administration's right to indemnity after default on Veterans Administration-guaranteed loan, see ARMED SERVICES

I. IN GENERAL, ¶20–24.

II. CONTRACTUAL INDEMNITY, ¶25–49.

III. INDEMNIFICATION BY OPERATION OF LAW, ¶50–84.

IV. CONCLUSIVENESS OF FORMER ADJUDICATION, ¶85–89.

V. ACTIONS, ¶90–109.

VI. RIGHTS AND REMEDIES OF INDEMNITOR, ¶110–112.

I. IN GENERAL.

20. Nature of obligation.

21. Constitutional and statutory provisions.

22. — In general.

23. — Validity.

24. What law governs.

II. CONTRACTUAL INDEMNITY.

25. In general.

26. Requisites and validity of contracts.

27. — In general.

208. INDEMNITY

II. CONTRACTUAL INDEMNITY.(Cont'd)

- 28. — Bonds of indemnity.
- 29. — Unconscionability.
- 30. — Indemnitor's own negligence or fault.
 - (1). In general.
 - (2). Contract liability.
 - (3). Lease agreements; vehicle rental contracts.
 - (4). Personal injury liability.
 - (5). Contractors, subcontractors, and owners.
 - (6). Environmental law.
 - (7). Railroads.
 - (8). Maritime cases.
- 31. Construction and operation of contracts.
 - (1). In general.
 - (2). Intention of the parties.
 - (3). Parties in general.
 - (4). Subject-matter in general.
 - (5). Liberal or strict construction.
 - (6). Indemnitor's own negligence or fault, in general.
 - (7). Duty to defend.
- 32. Concurrent fault; active or passive negligence.
- 33. Particular cases and issues.
 - (1). In general.
 - (2). Contract liability.
 - (3). Lease agreements; vehicle rental contracts.
 - (4). Personal injury liability.
 - (5). Contractors, subcontractors, and owners.
 - (6). Environmental law.
 - (7). Railroads.
 - (8). Maritime cases.
- 34. Scope and extent of liability.
- 35. — In general.
- 36. — Costs and expenses.
- 37. — Attorney fees.
- 38. — Interest.
- 39. — Profits.
- 40. Notice in general.
- 41. Notice of settlement.
- 42. Accrual of liability.
- 43. Accrual of duty to defend.
- 44. Consent to settlement.

II. CONTRACTUAL INDEMNITY.(Cont'd)

- 45. Voluntary payment by indemnitee; necessity of compulsory payment.

III. INDEMNIFICATION BY OPERATION OF LAW.

- 50. In general.
- 51. Equitable indemnification in general.
- 52. Comparative equitable indemnity.
- 53. Common law indemnification.
- 54. Implied contract of indemnity.
- 55. Statutory duty to indemnify.
- 56. Right of one compelled to pay against person primarily liable.
- 57. — In general.
- 58. — Joint tortfeasors or parties in pari delicto in general.
- 59. — Relative culpability.
- 60. — Active or passive negligence.
- 61. — Secondary liability.
- 62. Duty to defend.
- 63. Particular cases and issues.
- 64. — In general.
- 65. — Torts, in general.
- 66. — Motor vehicles.
- 67. — Contractors, subcontractors; or owners.
- 68. — Land, premises, highways, or streets.
- 69. — Maritime cases.
- 70. — Railroads.
- 71. — Indemnity to master or principal from servant or agent.
- 72. — Successive sellers; products liability.
- 73. Scope and extent of liability.
- 74. — In general.
- 75. — Costs and expenses.
- 76. — Attorney fees.
- 77. — Interest.
- 78. — Profits.
- 79. Notice in general.
- 80. Notice of settlement.
- 81. Accrual of liability.
- 82. Accrual of duty to defend.
- 83. Consent to settlement.
- 84. Voluntary payment by indemnitee; necessity of compulsory payment.

208. INDEMNITY

IV. CONCLUSIVENESS OF FORMER ADJUDICATION.

85. In general.

V. ACTIONS.

- 90. In general.
- 91. Form of remedy.
- 92. Persons entitled to sue and parties.
- 93. Conditions precedent.
- 94. Defenses.
- 95. Settlement with third party as bar to action.
- 96. Time to sue.
- 97. Pleading.
- 98. Evidence.
- 99. — In general.
- 100. — Presumptions and burden of proof.
- 101. — Admissibility.
- 102. — Weight and sufficiency.
- 103. Instructions.
- 104. Questions for jury.
- 105. Verdict and findings.
- 106. Judgment and enforcement thereof.

VI. RIGHTS AND REMEDIES OF INDEMNITOR.

- 110. In general.
- 111. Discharge.
- 112. Actions between indemnitee and indemnitor.

209. INDIANS

SUBJECTS INCLUDED

- Status, rights, and disabilities of Indians and other native peoples of North America
- Regulation and protection of such persons and their property, real and personal, and their religious and cultural sites, items, and practices
- Leasing, sale, and other alienation of Indian lands
- Administrative agencies, officers, and agents dealing with Indians

Domestic relations, issues peculiar to Indians and Indian children

Tribes and government of Indian country and the reservations, including tribal courts

Laws and regulations promulgated by tribal governments

Treaties with the United States and others

Indian gaming, establishment and regulation

Actions in state or federal court against or involving Indians and tribes, as to issues peculiar to them

Sovereign immunity of Indian tribes and officials

Regulation of intoxicating liquor in Indian country and on the reservations

Indian hunting and fishing rights, mineral and oil rights, and water rights

Offenses and prosecutions involving Indians or other persons in Indian country and on the reservations

Proceedings in tribal courts and agencies

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Federal and state laws and the application thereof to Indians or tribes, but as to which that status is neither determinative nor relevant, see other topics

State motor vehicle laws applied to Indians and on the reservations, see AUTOMOBILES

Comity afforded to tribal court judgments, see COURTS

Concurrent state-tribal court jurisdiction, see COURTS ⇨530

Condemnation and the "taking" of Indian lands under the Fifth Amendment, see EMINENT DOMAIN

Judicial notice of the laws and customs of Indians, see EVIDENCE ⇨36

Federal question jurisdiction in cases involving Indians or Indian lands, see FEDERAL COURTS ⇨2306

Habeas corpus affecting Indians or proceedings in tribal courts, see HABEAS CORPUS

Taxes imposed by the Federal Government or the states upon Indians or their tribes, see INTERNAL REVENUE and TAXATION

Enforcement of tribal court judgments in non-tribal courts, see JUDGMENT ⇨832.5

209. INDIANS

Indian customs as to marriage, see **MARRIAGE AND COHABITATION**

General water law principles applied to the ownership or transfer of submerged Indian lands, see **WATER LAW**

Lands derived from Indians, titles to, see **PUBLIC LANDS**

Claims against the United States under laws relating to Indians, see **UNITED STATES**

Testamentary capacity of Indians, see **WILLS**

Assertion of sovereign immunity by a tribe against a subpoena asking for documents, see **WITNESSES**

I. IN GENERAL, ¶100-120.

II. TREATIES IN GENERAL, ¶121-125.

III. PROTECTION OF PERSONS AND PERSONAL RIGHTS; DOMESTIC RELATIONS, ¶126-149.

IV. REAL PROPERTY, ¶150-209.

V. GOVERNMENT OF INDIAN COUNTRY, RESERVATIONS, AND TRIBES IN GENERAL, ¶210-229.

VI. ACTIONS, ¶230-259.

VII. OFFENSES AND PROSECUTIONS, ¶260-319.

(A) IN GENERAL, ¶260-269.

(B) JURISDICTION AND POWER TO ENFORCE CRIMINAL LAWS, ¶270-299.

(C) PROCEDURE AND PUNISHMENT, ¶300-319.

VIII. INTOXICATING LIQUORS, ¶320-329.

IX. GAMING, ¶330-349.

X. HUNTING, FISHING, AND SIMILAR RIGHTS, ¶350-399.

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES, ¶400-662.

(A) IN GENERAL, ¶400-409.

(B) ADMINISTRATIVE PROCEEDINGS, ¶410-499.

(C) CIVIL ACTIONS AND PROCEEDINGS, ¶500-599.

(D) CRIMINAL PROSECUTIONS AND PROCEEDINGS, ¶600-649.

(E) JURY, ¶650-659.

(F) COSTS AND FEES, ¶660-662.

I. IN GENERAL.

100. In general.

101. Who are Indians or Native Americans.
For purposes of criminal offenses and prosecutions, see ¶262.

102. Status of Indian nations or tribes.

I. IN GENERAL.(Cont'd)

103. — In general.

104. — Federal recognition.

105. — Trust relationship; fiduciary duty of United States.

Monetary claims against the United States for breach of fiduciary duty, see UNITED STATES.

106. Authority over and regulation of tribes in general.

107. Constitutional and statutory provisions.

108. — In general.

109. — Purpose and construction.

110. — Validity.

111. — Retroactivity.

112. Administrative agencies, officers, and agents.

113. — In general.

114. — Appointment and tenure.

115. — Compensation, expenses, and reimbursement.

116. — Authority in general.

117. — Duties and liabilities.

118. — Administrative proceedings.

Tribal agency proceedings, see XI.

119. Status and disabilities of Indians in general.

120. Regulation of intercourse with Indians.
See also, COMMERCE ¶6.

II. TREATIES IN GENERAL.

121. In general.

122. Validity.

123. Alteration or abrogation in general.

124. Construction and operation.

125. Descendants of signatory tribes.

III. PROTECTION OF PERSONS AND PERSONAL RIGHTS; DOMESTIC RELATIONS.

126. In general.

127. Constitutional and statutory provisions.

128. — In general.

129. — Purpose and construction.

130. — Validity.

131. Domestic relations, marriage and dissolution of marriage in general.

See also DIVORCE and MARRIAGE AND COHABITATION.

132. Infants.

See also INFANTS.

133. — In general.

209. INDIANS

III. PROTECTION OF PERSONS AND PERSONAL RIGHTS; DOMESTIC RELATIONS.(Cont'd)

- 134. — Dependent children; termination of parental rights.
 - (1). In general.
 - (2). "Active efforts" requirement.
 - (3). Jurisdiction; state or tribal court.
 - (4). Actions and proceedings in general.
 - (5). Notice of pending state proceedings and right to intervene.
- 135. — Juvenile delinquency and youthful offenders.
- 136. — Child custody.
See also CHILD CUSTODY.
- 137. — Child support.
See also CHILD SUPPORT.
- 138. — Adoption of persons.
See also ADOPTION.
- 139. Financial assistance, support, and supplies.
- 140. Education and training.
- 141. Personal property.
 - (1). In general.
 - (2). Trust funds and payments.
- 142. Contracts.
 - (1). In general.
 - (2). Legal services.
- 143. Liabilities for depredations and injuries to property.
See also UNITED STATES ¶414.
- 144. Religious and cultural sites, items, and practices.
- 145. Eligibility to vote.
- 146. Eligibility for office, public employment, or service.
- 147. Admission to citizenship.
- 148. Removal of persons under laws relating to Indians.
Removal of non-members by tribes, see ¶223.
- 149. Penalties under laws relating to Indians.

IV. REAL PROPERTY.

Eminent domain and "takings" under the Fifth Amendment, see EMINENT DOMAIN.

- 150. In general.
- 151. Title and rights to Indian lands in general.
General water law principles applied to the ownership or transfer of submerged Indian lands, see WATER LAW.
- 152. Land held in trust in general.

IV. REAL PROPERTY.(Cont'd)

- 153. Loss or termination of rights in general; extinguishment.
- 154. Treaties, construction, and operation in general.
- 155. Cession by treaties.
- 156. Reservations or grants to Indian nations or tribes.
- 157. — In general.
- 158. — Lands included and boundaries; appropriation and diminishment.
- 159. — Disestablishment and termination.
- 160. Grants and patents to individual Indians in general.
Allotments, see ¶161.
- 161. Allotment or partition.
- 162. — In general.
- 163. — Lands subject.
- 164. — Persons entitled; enrollment and record thereof.
 - (1). In general.
 - (2). Evidence.
- 165. — Preferential rights.
- 166. — Homestead as including allotment.
- 167. — Incompetent allottees.
- 168. — Patents.
- 169. — Cancellation of allotments.
- 170. — Operation and effect.
Alienation of allotments, see ¶175.
- 171. Alaska native claims settlement.
See also ¶228.
- 172. Alienation in general.
- 173. — In general.
- 174. — Approval by, or through, federal authorities in general.
- 175. — Allotments.
- 176. Leases.
- 177. — In general.
- 178. — Power to lease lands and validity in general.
- 179. — Supervision by federal officers.
- 180. — Construction and operation in general.
- 181. — Duration and termination.
- 182. — Assignment, subletting, or other transfer.
- 183. — Rent and recovery thereof.
- 184. — Recovery of possession of demised premises.
- 185. — Improvements.

209. INDIANS

IV. REAL PROPERTY.(Cont'd)

- 186. — Rights and liabilities of tenant under invalid lease.
- 187. Rights of way and easements.
- 188. Water rights and management.
- 189. — In general.
- 190. — Amount, measure, and allowable purposes.
- 191. Mineral rights and management.
- 192. — In general.
- 193. — Leases in general.
- 194. — Oil and gas.
- 195. Cutting and sale of timber.
- 196. Descent and distribution.
- 197. — In general.
- 198. — Allotments.
- 199. Trespass.
See also TRESPASS.
- 200. Execution; judicial sale.
- 201. Adverse possession and improvements by intruders.

V. GOVERNMENT OF INDIAN COUNTRY, RESERVATIONS, AND TRIBES IN GENERAL.

- 210. In general.
- 211. State regulation.
- 212. Preemption.
As to Indian gaming, see ¶332.
- 213. Indian civil rights laws.
- 214. Tribal constitution and bylaws.
- 214.5. Tribal elections in general.
- 215. Tribal officers.
Sovereign immunity of tribal officers, see ¶236; sovereign immunity of tribal officers in cases brought in tribal courts, see INDIANS ¶403.
- 216. — In general.
- 217. — Election or appointment.
- 218. — Removal, recall, suspension, and other discipline.
- 219. Tribal or Indian courts.
Tribal court proceedings, see XI. Exhaustion of tribal court remedies before a federal district court can exercise jurisdiction, see ¶244.
- 220. — In general.
Enforcement of tribal court judgment in non-tribal court, see JUDGMENT.
- 221. — Jurisdiction.
Concurrent jurisdiction of state and tribal courts, see COURTS ¶530.
- 222. Membership.

V. GOVERNMENT OF INDIAN COUNTRY, RESERVATIONS, AND TRIBES IN GENERAL.(Cont'd)

- 223. Regulation of non-members by tribe or tribal government.
- 224. Employees of tribe.
In gaming facilities, see IX.
- 225. Taxes imposed by tribe.
See also TAXATION and INTERNAL REVENUE.
- 226. Licenses granted by tribe in general.
See also LICENSES.
- 227. Tribal zoning, planning, and building regulations; housing authorities.
See also ZONING AND PLANNING.
- 228. Native village corporations.
See also ¶171.

VI. ACTIONS.

Involving domestic relations, see III; criminal prosecutions in general, see VII; gaming, see IX; hunting and fishing, see X; in tribal courts, see XI.

- 230. In general.
- 231. Rights of action.
- 232. — In general.
- 233. — Statutory.
- 234. Sovereign immunity.
- 235. — In general.
- 236. — Tribal officers and officials.
- 237. Standing.
- 238. Jurisdiction.
- 239. — In general.
- 240. — Federal courts.
Federal question jurisdiction, see FEDERAL COURTS.
- 241. — State courts.
State courts acting as federal agencies in the approval of alienation of Indian lands, see ¶172.
 - (1). In general.
 - (2). Probate jurisdiction.
- 242. Conditions precedent; exhaustion.
- 243. — In general.
- 244. — Exhaustion of tribal court remedies.
- 245. Limitations and laches.
Computation, accrual, and tolling of statutes of limitations, see LIMITATION OF ACTIONS.
- 246. Parties.
See also FEDERAL CIVIL PROCEDURE II.
- 247. Process.
- 248. Pleading.
- 249. Evidence.
- 250. Trial.
- 251. Judgment.

209. INDIANS

VI. ACTIONS.(Cont'd)

- 252. Appeal or other review.
- 253. Costs.

VII. OFFENSES AND PROSECUTIONS.

Crimes involving intoxicating liquor, see VIII; gaming, see IX; hunting and fishing, see X.

(A) IN GENERAL.

- 260. In general.
- 261. Constitutional and statutory provisions.
- 262. Who is an Indian; tribal status.
- 263. What is Indian country in general.
- 264. Crimes by Indians in Indian country or on reservation.
- 265. Crimes by Indians out of Indian country or off reservation.
- 266. Crimes by non-Indians.

(B) JURISDICTION AND POWER TO ENFORCE CRIMINAL LAWS.

State motor vehicle laws applied to Indians and on the reservations, see AUTOMOBILES.

- 270. In general.
- 271. Indian defendant.
- 272. — In general.
- 273. — Non-member of tribe in general.
- 274. — Crime committed in Indian country or on reservation.
 - (1). In general.
 - (2). State court or authorities.
 - (3). Tribal court or authorities.
 - (4). Federal court or authorities.
 - (5). Concurrent jurisdiction.
- 275. — Crime committed out of Indian country or off reservation.
 - (1). In general.
 - (2). State court or authorities.
 - (3). Tribal court or authorities.
 - (4). Federal court or authorities.
 - (5). Concurrent jurisdiction.
- 276. Non-Indian defendant.
- 277. — In general.
- 278. — Crime committed in Indian country or on reservation.

(C) PROCEDURE AND PUNISHMENT.

Proceedings in tribal court, see XI.

- 300. In general.
- 301. Extradition.
- 302. Venue.

VII. OFFENSES AND PROSECUTIONS.(Cont'd)

- 303. Indictment and information.
- 304. Evidence.
See also CRIMINAL LAW XVII.
- 305. — In general.
- 306. — Presumptions and burden of proof.
- 307. — Weight and sufficiency.
- 308. Questions for jury.
- 309. Instructions.
- 310. Appeal.
- 311. Sentencing and punishment.

VIII. INTOXICATING LIQUORS.

- 320. In general.
- 321. Introduction into, or possession in, Indian country.
- 322. Selling or furnishing.
- 323. State or tribal regulation.

IX. GAMING.

- 330. In general.
- 331. Constitutional and statutory provisions.
- 332. Preemption.
- 333. Establishment and regulation in general.
- 334. — In general.
- 335. — Lands available for gaming.
- 336. — Social and ceremonial gaming.
- 337. — Other gaming.
 - (1). In general.
 - (2). Activities otherwise permitted by state.
 - (3). Tribal-state compacts.
- 338. Operation and conduct of authorized gaming.
- 339. — In general.
- 339.5. — Employment.
- 340. — Fees and revenue.
State or federal taxes, see TAXATION and INTERNAL REVENUE.
- 341. Administrative agencies and proceedings.
Tribal agency proceedings, see XI.
- 342. Actions.
Actions in tribal court, see XI.
- 343. Offenses and prosecutions.
Proceedings in tribal court, see XI.

X. HUNTING, FISHING, AND SIMILAR RIGHTS.

See also FISH and GAME. Proceedings in tribal courts and agencies, see XI.

209. INDIANS

X. HUNTING, FISHING, AND SIMILAR RIGHTS.(Cont'd)

- 350. In general.
- 351. Federal statutes protecting particular animals.
See also ENVIRONMENTAL LAW XI.
- 352. Abrogation, modification, or relinquishment in general.
- 353. State regulation in general.
- 354. Violation; enforcement.
- 355. Offenses.
- 356. — In general.
- 357. — Jurisdiction and enforcement.
- 358. — Prosecution and punishment.
- 359. Fishing rights.
- 360. — In general.
- 361. — Indians and tribes holding rights.
- 362. — Abrogation, modification, or relinquishment in general.
- 363. — State regulation in general.
- 364. — Place or station; off-reservation activity.
- 365. — Manner and time; netting.
- 366. — Allocation or apportionment of fish.
- 367. — Actions and proceedings.
- 368. — Offenses.
 - (1). In general.
 - (2). Jurisdiction and enforcement.
 - (3). Prosecution and punishment.

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.

(A) IN GENERAL.

- 400. In general.
- 401. Courts in general.
- 402. Nature and form of remedy.
- 403. Liability of tribes, tribal officers and agents; immunity.
- 404. — In general.
- 405. — Waiver and consent.
- 406. — Particular cases.

(B) ADMINISTRATIVE PROCEEDINGS.

- 410. In general.
- 411. Investigations.
- 412. Rules and regulations.
- 413. Jurisdiction and authority.
- 414. Time for proceedings.
- 415. Parties.

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.(Cont'd)

- 416. Notice and appearance.
- 417. Pleading, petition, or application.
- 418. Hearing.
- 419. — In general.
- 420. — Access; open meeting.
- 421. — Evidence and witnesses.
- 422. Determination.
- 423. — In general.
- 424. — Time for determination.
- 425. — Voting; bias and disqualification.
- 426. — Findings, conclusions, minutes, or records.
- 427. — Effect of decision; res judicata.
- 428. — Rehearing or reconsideration.
- 429. Further administrative review.
- 430. Judicial review.
- 431. — In general.
- 432. — Exhaustion of remedies.
- 433. — Decisions reviewable; jurisdiction.
- 434. — Persons entitled to seek review.
- 435. — Preservation of error.
- 436. — Time for proceedings.
- 437. — Parties and intervention.
- 438. — Process, notice or appearance.
- 439. — Pleading.
- 440. — Scope of review.
 - (1). In general.
 - (2). Trial de novo.
 - (3). Wisdom, judgment, or opinion.
 - (4). Arbitrary, unreasonable, or capricious action; illegality.
 - (5). Harmless or prejudicial error.
 - (6). Fact questions.
- 441. — Determination and relief.
- 442. — Further review.
- 443. Enforcement and contempt.

(C) CIVIL ACTIONS AND PROCEEDINGS.

- 500. In general.
- 501. Jurisdiction and venue.
- 502. What law governs.
- 503. Conditions precedent.
- 504. — In general.
- 505. — Exhaustion of remedies.
- 506. — Notice of claim or injury.
- 507. Persons entitled to sue; standing.
- 508. Time for proceedings.

209. INDIANS

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.(Cont'd)

- 509. Parties.
- 510. Process, notice and appearance.
- 511. Pleading.
- 512. Motions.
- 513. Pretrial procedure.
- 514. — In general.
- 515. — Discovery.
- 516. — Dismissal.
- 517. — Continuance.
- 518. Trial or hearing.
- 519. — In general.
- 520. — Evidence and witnesses.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Weight and sufficiency of evidence.
- 521. — Questions for jury.
- 522. — Instructions.
- 523. — Verdict and findings.
- 524. — Rehearing or reconsideration.
- 525. New trial.
- 526. Judgment.
- 527. — In general.
- 528. — Consent and settlement.
- 529. — Default.
- 530. — Summary judgment.
- 531. — Effect of judgment; res judicata.
- 532. — Effect of judgments from other tribes.
- 533. Relief granted.
- 534. — In general.
- 535. — Monetary relief and damages in general.
- 536. — Punitive or exemplary damages.
- 537. — Injunctive and declaratory relief.
- 538. — Prerogative writs.
- 539. Enforcement and contempt; prejudgment remedies.
- 540. Review.
- 541. — In general.
- 542. — Decisions reviewable.
- 543. — Right of review; standing.
- 544. — Preservation of grounds for review.
- 545. — Proceedings.

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.(Cont'd)

- 546. — Record, assignment of errors and briefs.
 - 547. — Scope of review.
 - 548. — Determination.
 - 549. — Further review.
- (D) CRIMINAL PROSECUTIONS
AND PROCEEDINGS.**
- 600. In general.
 - 601. Jurisdiction and venue.
 - 602. Time for bringing prosecution.
 - 603. Indictment and information; grand jury.
 - 604. Preliminary proceedings; bail.
 - 605. Arraignment and pleas.
 - 606. Dismissal, nol pros or discontinuance.
 - 607. Trial.
 - 608. — In general.
 - 609. — Time considerations; speedy trial.
 - 610. — Evidence and witnesses in general.
 - 611. — Presumptions and burden of proof.
 - 612. — Admissibility of evidence.
 - 613. — Weight and sufficiency of evidence.
 - 614. — Questions for jury.
 - 615. — Instructions.
 - 616. — Verdict and findings.
 - 617. — Rehearing or reconsideration.
 - 618. New trial.
 - 619. Judgment.
 - 620. Sentence and punishment.
 - 621. — In general.
 - 622. — Proceedings.
 - 623. — Fines and penalties.
 - 624. — Imprisonment.
 - 625. — Probation, parole, and other supervision.
 - 626. — Restitution and reparation.
 - 627. — Other alternative dispositions.
 - 628. Review.
 - 629. — In general.
 - 630. — Decisions reviewable and right of review.
 - 631. — Preservation of error.
 - 632. — Proceedings.
 - 633. — Record, assignment of errors and briefs.
 - 634. — Scope of review.
 - 635. — Determination.

210. INDICTMENT AND INFORMATION

XI. PROCEEDINGS IN TRIBAL COURTS AND AGENCIES.(Cont'd)

- 636. — Further appeal.
- 637. Post-conviction relief.
- 638. Counsel.
- 639. Contempt.
- 640. Juvenile delinquency.

(E) JURY.

- 650. In general.
- 651. Right to jury trial.
- 652. Competency, challenges and objections.

(F) COSTS AND FEES.

- 660. In general.
- 661. Attorney fees in general.
- 662. Criminal prosecutions.

210. INDICTMENT AND INFORMATION

SUBJECTS INCLUDED

Formal written accusations of public offenses, presented by grand juries or preferred by prosecuting officers, whether in form of indictment, presentment, information, or complaint

Necessity for presentment or indictment by grand jury

Finding, indorsing, filing, and requisites of such accusations

Objections thereto, motions to quash, etc., demurrers thereto, and amendment thereof

Joinder of parties and offenses, and variance between averments and proof

Conviction of offense included in that charged

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arraignment and pleas to indictments and trial thereof, see CRIMINAL LAW

Grand jury, organization and proceedings, see GRAND JURY

Municipal ordinances, prosecutions for violation, see MUNICIPAL CORPORATIONS

Particular offenses, accusations and proceedings thereon, see specific topics

Preliminary complaints and proceedings thereon before indictment, see CRIMINAL LAW

I. NECESSITY OF INDICTMENT OR PRESENTMENT, ¶1-5.

II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT, ¶6-16.

III. FORMAL REQUISITES OF INDICTMENT, ¶17-34.

IV. FILING AND FORMAL REQUISITES OF INFORMATION OR COMPLAINT, ¶35-54.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION, ¶55-123.

VI. JOINDER, ¶124-132.

VII. OBJECTIONS IN GENERAL, ¶133-135.

VIII. MOTION TO QUASH OR SET ASIDE, ¶136-143.

IX. MOTION TO DISMISS, ¶144-144.2.

X. DEMURRER, ¶145-154.

XI. AMENDMENT, ¶155-163.

XII. ISSUES, PROOF, AND VARIANCE, ¶164-184.

XIII. INCLUDED OFFENSES, ¶185-192.

XIV. WAIVER OF DEFECTS AND OBJECTIONS, ¶193-199.

XV. AIDER BY VERDICT, ¶200-203.

I. NECESSITY OF INDICTMENT OR PRESENTMENT.

1. Necessity of formal accusation in general.

2. Constitutional and statutory provisions.

(5). In general.

(1). Construction of provisions of state constitutions.

(2). Construction of provisions of federal constitution.

(3). Construction of statutory provisions.

(4). Constitutionality of statutes.

3. Offenses which must be prosecuted by indictment.

4. Proper form of accusation.

4.5. Time for accusation in general.

5. Waiver.

II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT.

6. Jurisdiction of court.

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II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT.(Cont'd)

7. Term of court or time of finding.
8. Prosecutor or informer.
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 - 10.1. — Validity in general.
 - (1). In general.
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 - (3). Requisites of presentment and finding.
 - (4). Irregularities in finding indictment in general.
 - (5). Presence of unauthorized persons at hearing.
 - (6). Concurrence in findings.
 - (7). Impeachment or support by testimony of grand jurors.
 - 10.2. — Evidence supporting indictment.
 - (1). In general.
 - (2). Competency and legality of evidence.
 - (3). Degree of proof.
 - (4). Determination by grand jury.
 - (5). Corroboration of witnesses.
 - (6). Presumptions and burden of proof.
 - (7). Limitations on judicial review of evidence.
 - (8). Particular offenses in general.
 - (9). Assault and rape.
 - (10). Conspiracy.
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 - (12). Homicide.
 - (13). License law violations.
 - 10.3. — Other matters.
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 - 11.1. Filing and record.
 - 11.2. Amendments and subsequent entries.
12. Return and filing of evidence.
13. Filing away indictment.
14. Loss or destruction.
15. Successive indictments for same offense.
 - (1). In general.
 - (2). Effect of coexistent indictments on each other's validity.
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II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT.(Cont'd)

- (4). Subsequent indictment because of invalidity or not pros. prior one.
- (5). Procedure by grand jury as to second indictment.
- (6). Pendency of prosecution in another court.

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III. FORMAL REQUISITES OF INDICTMENT.

17. Form and contents in general.
18. Constitutional and statutory provisions.
19. Statutory forms.
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 21. — In general.
 22. — Title or description of court.
 23. — Place of holding court.
 24. — Term or time of holding court.
 25. — Description of grand jury.
 26. — Title of cause or names of parties.
27. Commencement.
 28. — In general.
 29. — Venue.
 30. — Presentment or accusation.
31. Charge or body of indictment.
32. Conclusion.
 - (1). In general.
 - (2). Conclusion to each count.
 - (3). Against peace and dignity.
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 - (2). A true bill.
 - (3). Statement of offense.
 - (4). Names of witnesses.
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35. Nature and purpose in general.
36. Constitutional and statutory provisions.
37. Statutory forms.
38. Jurisdiction of court.
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 - (2). Necessity of complaint or affidavit.
 - (3). Sufficiency of complaint or affidavit.
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 - (6). Examination.
42. Time of filing.
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46. Formal requisites of information.
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48. — Caption or title.
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50. — Conclusion.
51. — Signature.
 - (1). In general.
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 - (1). In general.
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 - (3). Sufficiency in general.
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54. Formal requisites of complaint or affidavit.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION.

55. Applicability of rules of pleading in general.
56. Constitutional requirements as to accusation.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

57. Statutory provisions as to statement of offense.
58. Subject-matter of allegations.
 - 58.1. — In general.
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60. — Elements and incidents of offense in general.
61. — Matter judicially noticed.
62. — Matters of presumption or implication.
63. — Matters of fact or conclusions.
64. — Conclusions of law from facts alleged.
65. — Matters of evidence.
66. — Matters of defense in general.
67. — Matter in avoidance of bar of statute of limitations.
68. — Matters peculiarly within knowledge of accused.
69. — Matters not known to grand jury.
70. Directness and positiveness.
71. Certainty and particularity.
 - 71.1. — In general.
 - 71.2. — Purpose of requirement and test of compliance.
 - (1). In general.
 - (2). Informing accused of nature of charge.
 - (3). Enabling accused to prepare for trial.
 - (4). Protection against subsequent prosecution.
 - 71.3. — Acts constituting and elements and incidents of offense, allegations as to.
 - 71.4. — Particular allegations and offenses.
 - (1). In general.
 - (2). Automobiles and traffic.
 - (3). Conspiracy.
 - (4). Forgery, fraud, or false pretenses; false entries or reports; false claims.
 - (5). Homicide; assault.
 - (6). Internal revenue violations.
 - (7). Intoxicating liquors and narcotics.

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V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

- (8). Larceny, burglary, robbery, embezzlement, and receiving or transporting stolen goods.
- (9). Mails, offenses relating to.
- (10). Malfeasance or nonfeasance in office; bribery.
- (11). Perjury; refusal to testify.
- (12). Rape and other sex offenses; offenses relating to minors.
- 72. Disjunctive or alternative allegations.
- 73. Repugnancy.
 - (1). In general.
 - (2). Description of or setting forth written or printed matter.
 - (3). Unnecessary or immaterial averments.
- 74. Language and form of allegations.
- 75. — In general.
 - (1). In general.
 - (2). Omission of essential words.
- 76. — Technical terms.
- 77. — Videlicet or scilicet.
- 78. — Abbreviations, numerals, and symbols.
- 79. — Mistakes in writing, grammar, or spelling.
- 80. — Erasures and interlineations.
- 81. Designation and description of accused.
 - (1). In general.
 - (2). Name adopted or by which usually known.
 - (3). Middle names or initials.
 - (4). Initials.
 - (5). Aliases.
 - (6). Estate, degree, mystery, or other addition.
 - (7). Place of residence.
- 82. Codefendants.
- 83. Principals in second degree; aiders and abettors.
- 84. Accessories before the fact.
- 85. Accessories after the fact.
- 86. Place of offense.
 - (.5). In general.
 - (1). Necessity of statement of place of venue.
 - (2). Sufficiency in general.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

- (3). Necessity of laying particular place within county or jurisdiction.
- (4). Averments as to city or town dispensing with averments as to county.
- (5). Offenses committed on boundary or within two counties.
- (6). Offenses committed on public conveyance.
- (7). Aider by reference to previous recitals.
- (8). Statutes dispensing with averments as to place.
- 87. Time of offense.
 - (.5). In general.
 - (1). Necessity of averments as to time in general.
 - (2). Sufficiency of averments in general.
 - (3). Averments that offense was committed prior to finding of indictment.
 - (4). Averments that offense was committed within period of limitations.
 - (5). Averments as to year or Christian era.
 - (6). Continuing offenses.
 - (7). Certainty.
 - (8). Indictments under statutes recently enacted.
 - (9). Statutes dispensing with averments as to time.
- 88. Intent or other mental state.
- 89. Knowledge, notice, and demand.
- 90. Matter of inducement.
- 91. Felonious or otherwise unlawful nature of act.
 - (.5). In general.
 - (1). Necessity of charging unlawfulness or wrongfulness in general.
 - (2). Necessity of use of word "felonious."
 - (3). Sufficiency of averment of unlawfulness.
- 92. Act or omission constituting offense.
- 93. — In general.

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V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

- 94. — Act or omission of agent or servant.
- 95. — Specific facts.
- 96. — Circumstances making act or omission criminal.
- 97. Separate counts.
- 98. — In general.
- 99. — Reference from one count to another.
- 100. — Defects and omissions.
- 101. Designation of person injured or others.
- 102. Description of real property.
- 103. Description of personal property.
- 104. Quantity or value of personal property.
- 105. Ownership, possession, or custody of property.
- 106. Description of or setting forth written or printed matter.
- 107. Statutory offenses.
- 107.1. — In general.
- 108. — Reference to or recital of statute.
- 109. — Elements and incidents of offense in general.
- 110. — Language of statute.
 - (1). In general.
 - (2). Necessity of using exact words in general.
 - (3). Sufficiency of indictment in language of statute in general.
 - (4). Exceptions to rule.
 - (5). Abortion.
 - (6). Rape.
 - (7). Arson.
 - (8). Bigamy.
 - (9). Bribery and embezzlement.
 - (10). Conspiracy.
 - (11). Disorderly houses and persons.
 - (12). Disturbance of public assemblages.
 - (13). Embezzlement.
 - (14). Escape and rescue.
 - (15). False pretenses, forgery, and fraud.
 - (16). Gaming and lotteries.
 - (17). Homicide and felonious assaults.
 - (18). Larceny, burglary, and receiving stolen goods.
 - (19). Lewdness and obscenity.
 - (20). Monopolies.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

- (21). Obstructing justice.
- (22). Offenses by corporations.
- (23). Offenses relating to animals.
- (24). Operation of railroad under unrecorded lease.
- (25). Sodomy.
- (26). Threats.
- (27). Unauthorized use of flag.
- (28). Violation of election laws.
- (29). Violation of labor laws.
- (30). Violation of revenue and license laws.
- (31). Violation of liquor laws.
- (32). Violation of Sunday laws.
- (33). Perjury and false swearing.
- (34). Injuring or destroying fences.
- (35). Violation of food laws.
- (36). Trespass.
- (37). Abandonment and nonsupport.
- (38). Carrying and use of weapons.
- (39). Extortion.
- (40). Illegal arrest.
- (41). Incest.
- (42). Kidnapping.
- (43). Libel and slander.
- (44). Malicious mischief.
- (45). Mayhem.
- (46). Offenses incident to supply of water.
- (47). Offenses relating to use of highway.
- (48). Offenses relating to children.
- (49). Offenses relating to telegraphs and telephones.
- (51). Prostitution.
- (52). Robbery.
- (53). Seduction.
- (54). Sending claims out of state for collection.
- (55). Vagrancy.
- (56). Violation of commerce regulations.
- (57). Violation of fish laws.
- (58). Violations of postal laws.
- (59). Unlawful sales.
- 111. — Exceptions and provisos.
 - (1). In general.

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V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

- (2). Necessity dependent on position of exception or proviso in statute.
- (3). Exceptions forming part of description of offense.
- (4). Sufficiency of negation.
- 112. — Validity as charge of offense at common law.
- 113. Matter of aggravation in general.
- 115. Attempts.
- 116. Solicitation.
- 117. Construction in general.
- 118. Surplusage and unnecessary matter.
- 119. — In general.
- 120. — Matter of description.
- 121. Bill of particulars.
- 121.1. — Nature and existence of right in general.
 - (.5). In general.
 - (1). Nature, purpose, and function.
 - (2). Power to require and right to allowance in general.
 - (3). Discretion of court.
 - (4). Vagueness or generality in charge.
 - (5). Form of indictment or information.
 - (6). Subject matter and scope.
 - (6.1). — In general.
 - (7). — Evidentiary matters.
- 121.2. — Cases in which allowed.
 - (1). In general.
 - (2). Anti-trust cases.
 - (3). Conspiracy in general.
 - (4). Fraud; false statements; false pretenses.
 - (5). Homicide; assault.
 - (6). Internal revenue violations.
 - (7). Intoxicating liquors and narcotics.
 - (8). Larceny, embezzlement, and receiving or transporting stolen goods.
 - (9). Postal and telecommunications offenses.
 - (10). Rape and other sex offenses; offenses relating to minors.
- 121.3. — Application.
- 121.4. — Requisites and sufficiency of bill.
- 121.5. — Effect of bill.

V. REQUISITES AND SUFFICIENCY OF ACCUSATION.(Cont'd)

- 121.6. — Other matters.
- 122. Variance from preliminary proceedings.
 - (.5). In general.
 - (1). Limitation by averments of, or evidence in, preliminary proceedings in general.
 - (2). Variance as to nature or degree of offense charged.
 - (3). Variance in designating accused or others.
 - (4). Variance in allegations as to time.
 - (5). Insufficiency of preliminary proceedings.
- 123. Aider by preliminary complaint or warrant.

VI. JOINDER.

- 124. Joinder of parties.
 - (1). In general.
 - (2). Necessity of joint or several accusations in general.
 - (3). Nature and effect of joinder.
 - (4). Offenses which admit of joint liability and prosecution.
 - (5). Indictments against several for different offenses relative to same subject-matter.
 - (6). Joinder of principals and accessories.
- 125. Duplicity.
 - (1). In general.
 - (2). Propriety of joinder of several offenses in general.
 - (3). Averments charging double liability in general.
 - (4). Series of acts constituting one or same offense.
 - (4.1). — In general.
 - (5). — Breach of the peace.
 - (5.5). — Conspiracy.
 - (6). — Counterfeiting, falsifying, forgery and fraud.
 - (7). — Destroying public records.
 - (8). — Disorderly houses and persons.
 - (9). — Embezzlement.
 - (10). — Failure of corporation to report.

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VI. JOINDER.(Cont'd)

- (11). — Failure to pay employees.
- (12). — Gaming and lotteries.
- (13). — Larceny.
- (14). — Liquor selling and keeping place.
- (15). — Misfeasance in office.
- (16). — Offenses by railroads.
- (17). — Violation of fish and game laws.
- (18). — Violation of food laws.
- (19). Several modes or means of committing same offense.
- (19.1). — In general.
- (20). — Conjunctive averments under disjunctive statutes.
- (21). — Abduction.
- (22). — Abortion.
- (23). — Civil rights.
- (24). — Counterfeiting, falsifying, forgery, and fraud.
- (25). — Cruelty to animals.
- (26). — Disorderly houses and persons.
- (27). — Embezzlement.
- (28). — Gaming and lotteries.
- (29). — Homicide and felonious assaults.
- (30). — Larceny or taking and using property without consent of owner.
- (31). — Offenses against liquor laws.
- (32). — Misfeasance in office.
- (33). — Nuisance.
- (34). — Obstruction of highway.
- (35). — Prostitution.
- (36). — Practicing medicine without authority.
- (37). — Rape.
- (38). — Receiving stolen goods.
- (39). — Robbery.
- (40). Concurring liability of principal, accessory, and conspirator.
- (41). Single act constituting two or more offenses.
- (42). Different offenses part of same transaction.

VI. JOINDER.(Cont'd)

- (43). Offenses of same nature against, or relative to, different persons, property or things.
- (43.1). — In general.
- (44). — Assault, homicide, or other violence to several persons.
- (45). — Larceny, receiving, embezzlement, or robbery of several things or property of several persons.
- (46). — Injuries to several pieces of property or property of several persons.
- (47). Sufficiency of averments to charge additional offense.
- 126. Joinder of counts; multiplicity.
- 127. — In general.
- 128. — Same offense.
- 129. — Different offenses in same transaction.
 - (1). In general.
 - (2). Burglary, larceny, and receiving stolen goods.
 - (3). Making and uttering or passing forged or counterfeit paper or money.
 - (4). Showing as to counts being relative to same transaction.
- 130. — Distinct offenses in general.
- 131. — Felonies and misdemeanors.
- 132. Election.
 - (1). In general.
 - (2). Election between offenses in general.
 - (3). Election between counts in general.
 - (4). Counts charging same offense.
 - (5). Counts for different offenses parts of same transaction.
 - (6). Counts charging liability as principal and accessory.
 - (7). Counts for distinct offenses in general.
 - (8). Discretion of court.
- VII. OBJECTIONS IN GENERAL.**
- 133. Mode of making objections in general.
 - (1). In general.

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VII. OBJECTIONS IN GENERAL.(Cont'd)

- (2). Unapparent defects and irregularities in general.
 - (3). Composition or constitution of grand jury.
 - (4). Indorsements.
 - (5). Regularity of preliminary proceedings.
 - (6). Formal objections to indictment, information or complaint.
 - (7). Sufficiency of accusation in general.
 - (8). Designation and description of defendants, persons injured, and others.
 - (9). Description of property.
 - (10). Misjoinder of parties, offenses, and counts.
134. Statutory provisions.

VIII. MOTION TO QUASH OR SET ASIDE.

136. In general.
137. Grounds.
- (1). In general.
 - (2). Composition or constitution of grand jury.
 - (3). Regularity of proceedings or findings of grand jury.
 - (4). Sufficiency of evidence and competency of witnesses.
 - (5). Regularity of preliminary proceedings.
 - (6). Sufficiency of accusation.
 - (7). Insufficiency of part of counts or allegations.
138. Form and requisites in general.
139. Time for making.
140. Hearing and determination.
- (1). In general.
 - (2). Evidence.
141. Order or judgment.
142. Operation and effect of decision.
143. Failure to move.

IX. MOTION TO DISMISS.

144. In general.
- 144.1. Grounds.
- (1). In general.
 - (2). Grand or petit jury irregularities.

IX. MOTION TO DISMISS.(Cont'd)

- (3). Incompetent or insufficient evidence.
- 144.2. Hearing and determination.
- ### X. DEMURRER.
145. Demurrer.
146. Nature of remedy.
147. Grounds.
148. Form and requisites in general.
149. Time for filing.
150. Hearing and determination.
151. Order or judgment.
152. Operation and effect of decision overruling demurrer.
153. Operation and effect of decision sustaining demurrer.
154. Failure to demur.

XI. AMENDMENT.

155. Defects and omissions requiring amendment in general.
156. Statutory provisions.
157. Defects cured by statute.
158. Indictment.
159. — In general.
- (1). In general.
 - (2). Accusation in general.
 - (3). Time and place.
 - (4). Designation of accused, person injured, or others.
160. — Amendment to conform to proof.
161. Information.
- (1). In general.
 - (2). Mode of making amendment.
 - (3). Time for amending.
 - (4). Amendable defects in general.
 - (5). Accusation in general.
 - (6). Designation of accused, person injured, or others.
 - (7). Place and time.
 - (8). Amendment to conform to proof.
 - (9). Effect of amendment.
162. Complaint or affidavit.
163. Bill of particulars.

XII. ISSUES, PROOF, AND VARIANCE.

164. Issues in general.
165. Matters to be proved.

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XII. ISSUES, PROOF, AND VARIANCE.(Cont'd)

- 166. — In general.
- 167. — Surplusage and unnecessary allegations.
- 168. — Part of charge sufficient to constitute offense.
- 169. Evidence admissible under pleadings.
- 170. Variance between allegations and proof.
- 171. — In general.
- 172. — Statutory provisions.
- 173. — Designation and description of accused.
- 174. — Principals and accessories.
- 175. — Place of offense.
- 176. — Time of offense.
- 177. — Intent.
- 178. — Knowledge or notice.
- 179. — Mode or means of committing offense.
- 180. — Designation of persons other than accused.
- 181. — Description, quantity, or value of property.
- 182. — Ownership, possession, or custody of property.
- 183. — Description of written or printed matter.
- 184. — Matters alleged to be unknown to grand jury.

XIII. INCLUDED OFFENSES.

- 185. Mode or form of accusation in general.
- 186. Constitutional and statutory provisions.
- 187. Sufficiency of charge of greater offense.
- 188. Sufficiency of charge of lesser offense.
- 189. Lesser grade or degree of offense charged.
 - (1). In general.
 - (2). Degrees of assault in general.
 - (3). Degrees of assault with intent to kill or murder.
 - (4). Degrees of assault with intent to maim, wound, disfigure, or do bodily harm or injury.
 - (5). Degrees of assault with intent to rape.
 - (6). Charges of shooting, cutting, stabbing, wounding, etc., with various intents.
 - (7). Degrees of burglary.

XIII. INCLUDED OFFENSES.(Cont'd)

- (8). Degrees of homicide.
- (9). Degrees of larceny.
- (10). Degrees of rape.
- (11). Degrees of robbery.
- 190. Attempt to commit offense charged.
- 191. Different offense included in offense charged.
 - (.5). In general.
 - (1). Charge of adultery.
 - (2). Charge of burglary.
 - (3). Charge of dueling.
 - (4). Charge of homicide.
 - (5). Charge of larceny.
 - (6). Charge of mayhem or other corporal injury.
 - (7). Charge of obstructing justice.
 - (8). Charge of rape.
 - (9). Charge of robbery.
 - (10). Charge of forgery or uttering forged paper.
- 192. Sufficiency or failure of proof of offense charged.

XIV. WAIVER OF DEFECTS AND OBJECTIONS.

- 193. Defects and objections which may be cured or waived.
- 194. Constitutional and statutory provisions.
- 195. Waiver.
 - 195.1. — In general.
- 196. — Objections to indictment or information.
 - (1). In general.
 - (2). Formal objections in general.
 - (3). Objections relative to finding, filing, and record thereof.
 - (4). Objections relative to signatures, indorsements, and verification.
 - (5). Objections to sufficiency of accusation in general.
 - (6). Objections relative to the designation and description of accused and others.
 - (7). Objections relative to duplicity, joinder, and election.
- 197. — Objections to rulings on motion or demurrer.
- 198. — Objections to amendments.
- 199. — Objections on ground of variance.

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XV. AIDER BY VERDICT.

- 200. In general.
- 201. Applicability of doctrine in general.
- 202. Defects cured.
 - (1). In general.
 - (2). Formal defects in general.
 - (3). Objections relative to finding, filing, and record thereof.
 - (4). Objections relative to indorsements, signatures, and verification.
 - (5). Insufficiency of accusation in general.
 - (6). Designation and description of accused and others.
 - (7). Averments as to place and time.
 - (8). Duplicity and misjoinder.
- 203. Verdict on good and bad counts.

211. INFANTS

SUBJECTS INCLUDED

Persons not of full age; children, minors, and juveniles
Their status, rights, capacities, and disabilities
Regulation and protection of their persons and property
Legal proceedings affecting them
Child and foster care providers
Child protective agencies, employees, investigations, and proceedings
Child abuse reporting and registries
Protection orders involving children
Crimes against children by nature or element, and prosecution and punishment thereof
Termination of parental rights
Juvenile delinquency and youthful offenders
Transfers of juveniles to and from adult criminal court
Rehabilitative institutions, facilities, and agencies
Juvenile records

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

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(2). Child hearsay.

(3). Contracts.

(4). Property and estate.

(5). Gifts and trusts.

(6). Torts.

(7). Child protection in general.

(8). Child labor.

(9). Child abuse reporting.

(10). Protection orders.

(11). Child and foster care.

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- 1031. In general.
 - 1032. Nature of right, capacity, or disability in general.
 - 1033. Eligibility for office or public employment or service.
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 - 1038. — Effect of majority or emancipation.

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II. STATUS, CAPACITIES, AND DISABILITIES.(Cont'd)

- 1040. Estoppel or waiver as to right, capacity, or disability.

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- 1091. In general.
- 1092. Role, power, and authority of courts in general.
- 1093. — In general.
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- 1095. — Gifts and trusts.
- 1096. Capacity as to property or estate in general.
- 1097. Nature and scope of estate or property in general.
- 1098. Control, management, and use of estate or property.
- 1099. Disposition, confirmation, or approval by court.
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- 1105. — Compensation for services rendered; attorney fees.
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- 1122. Capacity to purchase, convey, lease, or improve.
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- 1124. Requisites, validity, operation, and effect.
- 1125. — In general.
- 1126. — Particular transactions.
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- 1169. Custodian or trustee.
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- 1172. — Resignation, removal, and succession.
- 1173. — Status and authority.
- 1174. — Duties, responsibilities, and breach.
- 1175. Control, management, and use of property.
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IV. PROPERTY AND ESTATE.(Cont'd)

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- 1191. In general.
- 1192. Capacity to commit, and disability of infancy.
- 1193. Age as factor or limit.
- 1194. Nature, scope, and extent of liability and defenses thereto.
- 1195. Duty, degree, and standard of care.
- 1196. Intent, state of mind, and willful injury.
- 1197. Negligent conduct.
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- 1198. Torts in connection with contract.
- 1199. Trespass, conversion, and civil theft.
- 1200. False representations and fraud.
- 1201. Torts by, through, or as agent or representative.
- 1202. Torts between siblings.

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- 1211. In general.
- 1212. Role, power, or authority of representative.
- 1213. — In general.
- 1214. — Guardian ad litem or next friend.
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- 1217. Particular actions or claims.
- 1218. Construction, operation, and effect.
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- 1231. In general.
- 1232. Persons acting on behalf of child in general.
- 1233. Role of parent in general.
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 - (1). In general.
 - (2). Authority and discretion of court.
 - (3). Purpose, grounds, and necessity.
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 - (1). In general.
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 - (4). Probate and trusts.
 - (5). Partition proceedings.
 - (6). Foreclosure proceedings.
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 - (8). Adoption proceedings.
 - (9). Domestic relations and parentage.
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- 1239. — Time for appointment.
- 1240. — Proceedings for appointment.
 - (1). In general.
 - (2). Process as prerequisite to appointment.
 - (3). Evidence.
- 1241. — Eligibility and qualifications in general; bond.
- 1242. — Conflict of interest.
- 1243. — Resignation, removal, and successorship.
- 1244. — Compensation and expenses.
- 1245. — Rights and powers.
- 1246. — Duties, responsibilities, and liabilities.
 - (1). In general.
 - (2). Misconduct, misfeasance, or breach of fiduciary duty.
- 1247. — Liabilities on bonds.
- 1248. Appearance and representation by counsel.
- 1249. — In general.
- 1250. — Persons acting on behalf of child in general; dual role.
- 1251. — Nature of proceeding.
- 1252. — Nature of court.
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VII. ACTIONS.(Cont'd)

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- 1271. In general.
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- 1273. Right or capacity to sue and be sued.
- 1274. Joinder and severance of causes or proceedings.
- 1275. Time for pleading, proceedings, or ruling.
- 1276. Jurisdiction and venue.
- 1277. Right of action; standing.
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- 1278. — In general.
- 1279. — Representatives.
- 1280. — Contracts.
- 1281. — Estate and property transactions.
- 1282. — Gifts and trusts.
- 1283. — Public authorities, officers, and agencies.
- 1284. — Unborn children.
- 1285. — Tortious and personal injuries to child.
 - (1). In general.
 - (2). Public authorities, officers, and agencies.
 - (3). Assault, battery, and sexual abuse.
 - (4). Products liability.
 - (5). Motor vehicle accidents.
 - (6). Medical malpractice.
 - (7). Injuries prior to birth; wrongful life.
- 1286. Notice and process.
- 1287. Parties.
- 1288. — In general.
- 1289. — Joinder or intervention.
- 1290. Attainment of majority pending action.
- 1291. Pleading.
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- 1293. — Defense of infancy.
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- 1295. — Effect of admissions as against child.
- 1296. Discovery and disclosure; depositions.
- 1297. Dismissal and nonsuit.
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- 1303. Determination and findings.
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- 1307. — On consent, offer, or admission.
- 1308. — By default.
- 1309. — Amendment, correction, or modification.
- 1310. — Opening and vacating.
 - (1). In general.
 - (2). After attaining majority.
- 1311. — Collateral attack.
- 1312. — Construction, operation, and effect.
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- 1314. Reservation to child of day in court.
- 1315. Damages or other remedy.
- 1316. Execution and enforcement of judgment.
- 1317. Costs and fees.
- 1318. — In general.
- 1319. — Attorney fees.
- 1320. — Stage or condition of cause.

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- 1331. In general.
- 1332. Application of rules of evidence in general.
- 1333. Presumptions, inferences, and burden of proof.
- 1334. — In general.
- 1335. — Contracts.
- 1336. — Estate and property transactions.
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- 1339. Admissibility.
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VII. ACTIONS.(Cont'd)

- 1341. Weight and sufficiency.
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(D) APPEAL AND REVIEW.

- 1351. In general.
- 1352. Decisions reviewable.
- 1353. Right of review and parties.
- 1354. Effect of attainment of age of majority.
- 1355. Preservation of grounds for review.
- 1356. Perfection; notice and effect of appeal.
- 1357. Record.
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- 1363. Trial or review de novo.
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- 1365. Presumptions, inferences, and burden of proof.
- 1366. Discretion of lower court.
- 1367. Questions of fact and findings.
- 1368. Harmless or prejudicial error.
- 1369. Determination and remand.

VIII. CHILD CARE.

- 1381. In general.
- 1382. License, registration, and certification; inspection.
- 1383. — In general.
- 1384. — Camps.
- 1385. — Renewal and revocation.
- 1386. Bonds, administrative fees, and insurance.
- 1387. Contracts.
- 1388. Admission; records and immunizations.
- 1389. Rates and charges.
- 1390. Providers and staff.
- 1391. — In general.
- 1392. — Eligibility and qualifications.
- 1393. — Background checks.
- 1394. Duties, responsibilities, and liabilities.
- 1395. — In general.
- 1396. — Care of child; needs and conditions.
- 1397. — Injury to child.

VIII. CHILD CARE.(Cont'd)

- 1398. — Deprivation, neglect, or abuse.
- 1399. — Control or supervision.
- 1400. Special needs children.
- 1401. Authority, duties, and liabilities of supervising agency; immunity.
- 1402. Administrative proceedings and review.
- 1403. Judicial review and relief; actions and proceedings.
- 1404. Penalties.
- 1405. Public stipends and subsidies.
- 1406. Informal arrangements; babysitters.
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IX. CHILD PROTECTION.

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(A) IN GENERAL.

- 1411. In general.
- 1412. Interest, role, and authority of government in general.
- 1413. Role, power, and authority of courts in general.
- 1414. Welfare and best interest of child in general.
- 1415. Connection with state; location, residency, or domicile.

(B) AGENCIES AND PROCEEDINGS.

- 1421. In general.
- 1422. Creation and establishment.
- 1423. Public contracts and financing.
- 1424. Private agencies; religious affiliation.
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- 1425. Officers and employees.
- 1426. — In general.
- 1427. — Hiring or appointment.
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- 1429. — Compensation and benefits.
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- 1431. — Working conditions and case-loads.
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- 1433. Authority and powers in general.
- 1434. Particular powers, duties, and liabilities.
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- 1435. — In general.

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IX. CHILD PROTECTION.(Cont'd)

- 1436. — Duty and failure to protect.
- 1437. — Investigations, inspections, and entry therefor.
- 1438. — Home studies and visits.
- 1439. — Child abuse reports and investigations.
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- 1440. — Failure to investigate or act.
- 1441. — Protective custody and removal of child.
- 1442. — Physical and mental examinations.
- 1443. — Placement or disposition of child.
- 1444. — Reunification plans and conditions.
- 1445. — Services and treatment.
- 1446. — Special needs children.
- 1447. — Retaliation claims.
- 1448. — Immunity.
- 1449. — Offenses by officer or agency.
- 1450. Actions by or against agency.
- 1451. — In general.
- 1452. — Right of action, parties, and standing.
- 1453. — Time for motion, proceedings, or ruling.
- 1454. — Jurisdiction and venue.
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- 1456. — Discovery and disclosure.
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- 1458. — Hearing; counsel.
- 1459. — Determination and findings.
- 1460. — Judgment, remedies, and relief.
- 1461. Administrative proceedings and review thereof.
- 1462. — In general.
- 1463. — Pleading, notice, and process.
- 1464. — Evidence; plea or admission.
- 1465. — Hearing; counsel.
- 1466. — Determination and findings in general.
- 1467. — Indicated or substantiated findings and reports.
 - (1). In general.
 - (2). Particular conduct.
- 1468. — Registry, index, or list.
- 1469. — Effect of listing.
- 1470. — Special needs children.

IX. CHILD PROTECTION.(Cont'd)

- 1471. — Safeguards and protections against error.
- 1472. — Administrative review.
- 1473. — Judicial review, relief, and proceedings.

(C) HEALTH, SAFETY, AND MORALS.

Regulation of child's education, see EDUCATION.

- 1481. In general.
- 1482. Products harmful to children.
Consumer product safety, see ANTITRUST AND TRADE REGULATION. Regulation of drugs and narcotics, see CONTROLLED SUBSTANCES. Regulation of intoxicating liquors and sales to minors, see INTOXICATING LIQUORS.
- 1483. — In general.
- 1484. — Tobacco products.
- 1485. Tattoos and piercings.
- 1486. Visual, textual, and other depictions harmful to children.

(D) CHILD LABOR.

- 1491. In general.
- 1492. Dangerous or hazardous employment in general.
- 1493. Particular kinds or conditions of employment.
- 1494. Wages and hours.
Regulation of wages and hours under the Fair Labor Standards Act and similar employment laws of general application, see LABOR AND EMPLOYMENT XIII.

X. CHILD ABUSE REPORTING.

Criminal liability for failure to report, see 1565.

- 1501. In general.
- 1502. Persons obligated to report in general.
- 1503. Requisites and responsibilities as to reporting; form and information.
- 1504. Conduct subject to duty to report in general.
- 1505. Time for reporting; delay in general.
- 1506. Persons liable; immunity in general.
- 1507. Particular reporters.
- 1508. — In general.
- 1509. — Public authorities and agencies in general.
- 1510. — Medical institutions and professionals in general.
- 1511. — Mental health professionals.
- 1512. — School authorities and staff.

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X. CHILD ABUSE REPORTING.(Cont'd)

- 1513. — Child care and child care workers.
- 1514. — Religious authorities and personnel.
- 1515. False reports and accusations.
- 1516. Actions and proceedings.
- 1517. — In general.
- 1518. — Right of action, parties, and standing.
- 1519. — Evidence.

XI. ORDERS FOR PROTECTION OF CHILDREN.

Orders for protection between adults, see PROTECTION OF ENDANGERED PERSONS.

- 1531. In general.
- 1532. Elements, grounds, and defenses.
- 1533. Proceedings and jurisdiction.
- 1534. Relief granted; extension and modification.
- 1535. Violations, contempt, and conviction.
- 1536. Appeal and review.

XII. CRIMINAL ACTS AGAINST CHILDREN.

(A) IN GENERAL.

- 1541. In general.
- 1542. Intent or scienter; strict liability.
- 1543. Time of offense; repetition and duration.
- 1544. Age; knowledge or belief as to.
- 1545. Status as to child; position of authority or trust.

(B) PARTICULAR CRIMES AND DEFENSES THERETO.

- 1551. In general.
- 1552. Products harmful to children.
Sale or provision of intoxicating liquors to minors, see INTOXICATING LIQUORS.
- 1553. — In general.
- 1554. — Tobacco products.
- 1555. Tattoos and piercings.
- 1556. Child abuse, neglect, or endangerment.
- 1557. Vehicular operation.
- 1558. Deprivation of services.
- 1559. Assault, battery, and physical abuse.
- 1560. Injury to child and risk thereof; intervening cause.
- 1561. Corporal punishment and discipline.
- 1562. Cruelty to children; child torture.

XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)

- 1563. Child abuse resulting in death.
- 1564. Failure to aid, protect, or prevent; passive abuse.
- 1565. Failure to report abuse.
- 1566. Contributing to delinquency.
- 1567. — In general.
- 1568. — Furnishing or facilitating as to liquor or narcotics.
- 1569. Prohibited premises.

(C) SEX OFFENSES.

See also SEX OFFENSES.

- 1581. In general.
- 1582. Molestation and exploitation in general.
- 1583. Indecency and indecent liberties in general.
- 1584. Enticement, luring, and inducement in general.
Child abduction, see KIDNAPPING.
- 1585. Exposure of child to indecent material or sexual act.
- 1586. Sale or dissemination of indecent materials to children.
- 1587. Exhibition or use of child in indecent material or performance.
- 1588. Child prostitution.
- 1589. — In general.
- 1590. — Promoting, pimping, and pandering.
- 1591. Communication or solicitation for immoral purposes.
- 1592. Travel and transportation for immoral purposes.
- 1593. Sexual acts upon or with in general.
- 1594. Indecent contact, touching, or assault in general.
- 1595. Carnal knowledge; penetration.
- 1596. — In general.
- 1597. — Vaginal intercourse and rape.
- 1598. — Oral or anal copulation; sodomy.
- 1599. Sexual acts between children.

(D) PERSONS LIABLE.

- 1611. In general.
- 1612. Status as to child; position of authority or trust.
- 1613. Aiding and abetting; accomplices.

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(E) PROSECUTION ISSUES PARTICULAR TO OFFENSES AGAINST CHILDREN.

Criminal prosecutions in general, see CRIMINAL LAW, INDICTMENT AND INFORMATION, SENTENCING AND PUNISHMENT and other topics.

1. IN GENERAL.

- 1621. In general.
- 1622. Indictment and information.
- 1623. — In general.
- 1624. — Child abuse, neglect, endangerment, or cruelty.
- 1625. — Contributing to delinquency.
- 1626. — Issues, proof, and variance.
- 1627. Trial or hearing.
- 1628. — In general.
- 1629. — Guardian ad litem or next friend for child.
- 1630. — Counsel for child.
- 1631. — Interview or hearing as to child evidence or testimony.
- 1632. — Questions of fact or law.
 - (1). In general.
 - (2). Child abuse, neglect, endangerment, or cruelty.
 - (3). Contributing to delinquency.
- 1633. — Instructions.
 - (1). In general.
 - (2). Child abuse, neglect, endangerment, or cruelty.
 - (3). Contributing to delinquency.
- 1634. — Determination and findings.
- 1635. Sentence and punishment.
- 1636. — In general.
- 1637. — Child abuse, neglect, endangerment, or cruelty.
- 1638. — Contributing to delinquency.

2. SEX OFFENSE PROSECUTIONS.

See also SEX OFFENSES.

- 1651. In general.
- 1652. Indictment and information.
- 1653. — In general.
- 1654. — Molestation and exploitation in general; indecent liberties.
- 1655. — Indecent materials in general.
- 1656. — Indecent exhibition or use of child; child prostitution.
- 1657. — Indecent contact in general.
- 1658. — Carnal knowledge; rape and sodomy.

XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)

- 1659. — Issues, proof, and variance.
- 1660. Trial or hearing.
- 1661. — In general.
- 1662. — Guardian ad litem or next friend for child.
- 1663. — Counsel for child.
- 1664. — Interview or hearing as to child evidence or testimony.
- 1665. — Questions of fact or law.
 - (1). In general.
 - (2). Molestation and exploitation in general; indecent liberties.
 - (3). Indecent materials in general.
 - (4). Indecent exhibition or use of child; child prostitution.
 - (5). Indecent contact in general.
 - (6). Carnal knowledge; rape and sodomy.
- 1666. — Instructions.
 - (1). In general.
 - (2). Molestation and exploitation in general; indecent liberties.
 - (3). Indecent materials in general.
 - (4). Indecent exhibition or use of child; child prostitution.
 - (5). Indecent contact in general.
 - (6). Carnal knowledge; rape and sodomy.
 - (7). Intent or scienter; strict liability in general.
 - (8). Age and belief thereto.
 - (9). Time of offense; repetition and duration.
- 1667. — Determination and findings.
- 1668. Sentence and punishment.
- 1669. — In general.
- 1670. — Molestation and exploitation in general; indecent liberties.
- 1671. — Indecent materials in general.
- 1672. — Indecent exhibition or use of child; child prostitution.
- 1673. — Indecent contact in general.
- 1674. — Carnal knowledge; rape and sodomy.

(F) EVIDENCE ISSUES PARTICULAR TO OFFENSES AGAINST CHILDREN.

1. IN GENERAL.

- 1681. In general.

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XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)

- 1682. Presumptions, inferences, and burden of proof.
- 1683. — In general.
- 1684. — Age and knowledge thereof in general.
- 1685. — Harm, injury, or damage, and causation thereof.
- 1686. — Intent, state of mind, and motive.
- 1687. — Person responsible for injury.
- 1688. — Child testimony in general; credibility.
- 1689. — Child hearsay and statements.
- 1690. — Sentence or punishment.
- 1691. Admissibility.
- 1692. — In general.
- 1693. — Age and age differences in general.
- 1694. — Conduct, circumstances, and character of defendant.
- 1695. — Conduct, circumstances, and character of child.
- 1696. — Corroboration in general.
- 1697. — Declarations, admissions, and statements by child.
 - (1). In general.
 - (2). Child hearsay in general; procedure for admission.
 - (3). Unavailability to testify.
 - (4). Hearsay exceptions; trustworthiness and reliability.
 - (5). Necessity and sufficiency of corroboration.
- 1698. — Failure or delay in complaining in general.
- 1699. — Nonverbal communication; dolls, gestures, and illustrations.
- 1700. — False statements and recantations by child.
- 1701. Weight and sufficiency.
- 1702. — In general.
- 1703. — Credibility in general; child testimony.
- 1704. — Circumstantial evidence in general.
- 1705. — Particular crimes against children.
 - (1). In general.
 - (2). Child neglect or endangerment in general.

XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)

- (3). Vehicular operation.
- (4). Physical abuse and cruelty.
- (5). Contributing to delinquency in general.
- 1706. — Aiding and abetting in general; accomplice liability.
- 1707. — Intent, state of mind, and motive.
- 1708. — Identification and identity.
- 1709. — Corroboration in general; necessity and sufficiency.
 - (1). In general.
 - (2). Child statements and testimony.
 - (3). Accomplice testimony.
- 1710. — Necessity of expert testimony.

2. SEX OFFENSES.

See also SEX OFFENSES.

- 1721. In general.
- 1722. Presumptions, inferences, and burden of proof.
- 1723. — In general.
- 1724. — Age and knowledge thereof in general.
- 1725. — Capacity and maturity of child in general.
- 1726. — Sexual innocence, naivete, or experience.
- 1727. — Consent.
- 1728. — Intent, state of mind, and motive.
- 1729. — Interstate nature, commerce, and travel.
- 1730. — Child hearsay and statements.
- 1731. — Sentence or punishment.
- 1732. Admissibility.
- 1733. — In general.
- 1734. — Age and age differences in general.
- 1735. — Capacity and maturity of child in general.
- 1736. — Conduct, circumstances, and character of defendant.
- 1737. — Conduct, circumstances, and character of child.
 - (1). In general.
 - (2). Prior sexual history, experience, or abuse; rape shield.
- 1738. — Consent of child.
- 1739. — Corroboration in general.

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XII. CRIMINAL ACTS AGAINST CHILDREN.(Cont'd)

1740. — Declarations, admissions, and statements by child.
- (1). In general.
- (2). Child hearsay in general; procedure for admission.
- (3). Unavailability to testify.
- (4). Interviews and summaries.
- (5). Other hearsay exceptions; trustworthiness and reliability.
- (6). Complaint; outcry.
- (7). Accusations against third parties.
- (8). Necessity and sufficiency of corroboration.
1741. — Failure or delay in complaining.
1742. — Nonverbal communication; dolls, gestures, and illustrations.
1743. — False statements and recantations by child.
1744. Weight and sufficiency.
1745. — In general.
1746. — Molestation and exploitation in general; indecent liberties.
1747. — Exposure to indecent materials or sexual act.
1748. — Indecent exhibition or use of child; child prostitution.
1749. — Indecent contact in general.
1750. — Carnal knowledge; rape and sodomy.
1751. — Intent, state of mind, and motive.
1752. — Identification and identity.
1753. — Corroboration; necessity and sufficiency.
- (1). In general.
- (2). Child statements and testimony.
- (3). Accomplice testimony.
1754. — Time and place of offense; repetition and duration.
1755. — Age; knowledge or belief as to.
1756. — Status as to child; position of authority or trust.
1757. — Necessity of expert testimony.

XIII. FOSTER CARE.

Placement with foster parents as disposition in dependency or termination proceeding, see §2235.

1771. In general.
1772. License, registration, and certification.

XIII. FOSTER CARE.(Cont'd)

1773. Bonds, administrative fees, and insurance.
1774. Contracts; termination.
1775. Nature, expectations, and purpose of relation.
1776. Acceptance, custody, and removal of child.
1777. Rates, charges, and compensation.
1778. Providers and staff.
1779. — In general.
1780. — Eligibility and qualifications.
1781. — Background checks.
1782. Particular powers, duties, and liabilities of providers; immunity.
1783. — In general.
1784. — Care of child; needs and conditions.
1785. — Injury to child.
1786. — Deprivation, neglect, or abuse.
1787. — Control or supervision of child; third party injury.
1788. — Parental rights; visitation.
1789. Special needs children.
1790. Authority, duties, and liabilities of supervising agency; immunity.
1791. — In general.
1792. — Investigations, inspections, and examinations.
1793. — Care of child; services and treatment.
1794. — Injury to child.
1795. — Deprivation, neglect, or abuse.
1796. — Control or supervision of child; third party injury.
1797. Administrative proceedings and review.
1798. Judicial review, relief, and proceedings.
1799. Public stipends and subsidies.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.

(A) IN GENERAL.

1811. In general.
1812. Nature, form, and purpose.
1813. — In general.
1814. — Application of criminal procedures.
1815. Age limitations.

211. INFANTS

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 1816. Persons and relationships affected or subject.
- 1817. — In general.
- 1818. — “De facto” or presumed parent or status in general.
- 1819. — Stepparents.
- 1820. — Grandparents.
- 1821. — Same-sex couples and partners.
- 1822. — Foster and adoptive parents.
- 1823. — Effect of emancipation.
- 1824. Balancing of interests in general.
- 1825. Interest, role, and authority of government in general.
- 1826. Role, power, and authority of courts; discretion.

(B) PROTECTIVE OR PENDENTE LITE CUSTODY AND REMOVAL.

- 1831. In general.
- 1832. Entry for investigation and removal in general.
- 1833. Requisites and safeguards in general.
- 1834. Necessity and grounds; probable cause and reasonable suspicion.
- 1835. — In general.
- 1836. — Judicial approval, warrant, or order in general.
- 1837. — Exigent circumstances and imminent risk in general.
- 1838. — Runaways and truants.
- 1839. — Deprivation, neglect, or abuse.
 - (1). In general.
 - (2). Living conditions and squalor.
 - (3). Child abuse.
- 1840. — Deprivation of services or education.
- 1841. — Abandonment or absence of parent.
- 1842. Proceedings.
- 1843. — In general.
- 1844. — Hearing.
- 1845. — Evidence.
- 1846. Disposition of child; placement.
- 1847. Duration, extension, modification, or revocation.
- 1848. Services, care, and treatment.

(C) CHILDREN IN NEED OF SUPERVISION.

- 1861. In general.
- 1862. Mental or emotional illness or disturbance in general.
- 1863. Loss or breakdown of parental control in general.
- 1864. Incurable or disobedient children in general.
- 1865. Runaways.
- 1866. Truants.
- 1867. Vagrancy or idleness.
- 1868. Gang activity and consorting.
- 1869. Offense, violation, or infraction.

(D) DEPENDENCY, PERMANENCY, AND TERMINATION FACTORS; CHILDREN IN NEED OF AID.

1. IN GENERAL.

- 1881. In general.
- 1882. Dependency defined in general.
- 1883. Least restrictive means.
- 1884. Alternative remedies or placement.
- 1885. Past history or conduct.
- 1886. Needs, interest, and welfare of child.
- 1887. Preference or wishes of child.
- 1888. Post-termination plan for child.
- 1889. Adoptability and exceptions to adoption.
- 1890. Parental relationship or bond.
- 1891. Sibling relationship; separation.
- 1892. Likelihood of return to parent.
- 1893. Expectation or probability of improvement.
- 1894. Success and bonding with foster or adoptive families.
- 1895. Special needs children.
- 1896. Sexual orientation and transgender issues.
- 1897. Stipulations and agreements.
- 1898. Relinquishments and consent.
- 1899. — In general.
- 1900. — Voluntariness.
- 1901. — Withdrawal, revocation, and effect thereof.
- 1902. Multiple factors.

2. UNFITNESS OR INCOMPETENCE OF PARENT OR PERSON IN POSITION THEREOF.

- 1911. In general.
- 1912. Inability to parent in general; skills.

211. INFANTS

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 1913. Age of parent.
- 1914. Mental or emotional condition or incapacity.
- 1915. Physical condition.
- 1916. Financial stability and impoverishment.
- 1917. Lack of employment or housing.
- 1918. Dependency upon others for financial support.
- 1919. Frequency and instability of relationships.
- 1920. Misconduct in general; depravity.
- 1921. Drug and alcohol use and dependency.
- 1922. Domestic violence.
- 1923. Sexual behavior or misconduct.
- 1924. Conviction of crime; criminal history.
- 1925. Adjudication or termination as to other children.
- 1926. Incestuous parenthood.
- 1927. Special needs children.
- 1928. Sexual orientation and transgender issues.

3. DEPRIVATION, NEGLECT, OR ABUSE.

- 1941. In general.
- 1942. Definition of deprivation or neglect in general.
- 1943. Nature of harm or injury in general; failure to thrive.
- 1944. Employment and support.
- 1945. Necessaries and hygiene.
- 1946. Housing and living conditions.
- 1947. Endangerment.
- 1948. Failure to supervise, control, or protect.
- 1949. Exposure and access to firearms.
- 1950. Drug and alcohol use and dependency.
- 1951. — In general.
- 1952. — Fact of dependency.
- 1953. — Use during pregnancy.
- 1954. — Exposure and access.
- 1955. Commission of crime and incarceration.
- 1956. Vehicular offenses involving children.
- 1957. Domestic violence and altercations.
- 1958. — In general.
- 1959. — Exposure of child to.
- 1960. — Engaging or involving child in.
- 1961. Child abuse and molestation.
- 1962. — In general.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 1963. — Physical or emotional abuse; cruelty.
- 1964. — Sexual abuse.
- 1965. Derivative neglect or abuse.
- 1966. — In general.
- 1967. — Neglect or abuse of sibling or household member.
- 1968. — Neglect or abuse of non-sibling or third-party child.
- 1969. Protection or intervention against another.
- 1970. Custodian's associates and relationships.
- 1971. — In general.
- 1972. — Convicts and criminals.
- 1973. — Continued association with abusive parent or individual.
- 1974. — Frequency or repetitiveness of abusive relationships.
- 1975. Failure to plan.
- 1976. Future risk; past history or conduct.
- 1977. Special needs children.

4. DEPRIVATION OF SERVICES OR EDUCATION.

- 1991. In general.
- 1992. Education.
- 1993. Medical and dental.
- 1994. Mental health.
- 1995. Special needs children.

5. ABANDONMENT, ABSENCE, AND NONSUPPORT.

- 2001. In general.
- 2002. Deceased or unknown parent.
- 2003. Parental relationship or bond.
- 2004. Length of absence.
- 2005. Interest in child and demonstration thereof; persistence.
- 2006. Relinquishment or surrender of rights or child.
- 2007. Relocation without child.
- 2008. Leaving child in agency or third party custody; length.
- 2009. Failure or delay to petition for custody.
- 2010. Failure or delay to establish parentage.
- 2011. Failure to communicate or visit.
- 2012. Failure to attend activities and appointments.

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XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2013. Nondisclosure of or unknown whereabouts or address.
- 2014. Arrearages and failure to support.
- 2015. Commission of crime and incarceration.
- 2016. Failure to plan.

6. REHABILITATION; REUNIFICATION EFFORTS.

- 2021. In general.
- 2022. Entitlement and opportunity to rehabilitate.
- 2023. Time for rehabilitation; reasonableness.
- 2024. Unfitness or incompetence.
- 2025. Deprivation, neglect, or abuse.
- 2026. Deprivation of services.
- 2027. Abandonment or absence.
- 2028. Reunification plans and services.
- 2029. — In general.
- 2030. — Necessity and entitlement.
- 2031. — Requisites and sufficiency.
- 2032. — Efforts and compliance by government or agency.
- 2033. — Conditions in general.
- 2034. — Particular terms and conditions.
- 2035. — Visitation.
- 2036. — Duration.
- 2037. — Extension, termination, and renewal.
- 2038. Compliance by parent or custodian.
- 2039. Renewal of interest.
- 2040. Acceptance or denial of responsibility.
- 2041. Cooperation and progress.
- 2042. Efforts to resume custody or communicate; diligence.
- 2043. Counseling and treatment.
- 2044. Financial stability; employment and housing.
- 2045. Persistence of conditions.
- 2046. Failure to plan.
- 2047. Excuses and defenses in general.
- 2048. Parent deprived of custody or contact; custodial interference.
- 2049. Incarceration.

(E) PROCEEDINGS.

Proceedings on amendment, extension, or modification of placement, see §2286. Proceedings as to particular motions, see lines for those motions.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2061. In general.
- 2062. Orders of protection pending proceedings.
- 2063. Joinder and severance of causes or proceedings.
- 2064. Time for pleading, proceedings, or ruling; stay.
- 2065. Jurisdiction and venue.
- 2066. Inter-jurisdictional issues in general.
- 2067. Who may maintain; standing.
- 2068. — In general.
- 2069. — Private individuals.
- 2070. Notice and process.
- 2071. Plea or admission.
- 2072. Appearance, presence, and participation in general.
Appearance, presence, and participation in or at hearings, see §2097.
- 2073. — In general.
- 2074. — Parents and relatives.
- 2075. — Foster and de facto parents.
- 2076. — Other particular persons.
- 2077. Parties.
- 2078. — In general.
- 2079. — Intervention and joinder in general.
- 2080. — Parents and relatives.
- 2081. — Foster and de facto parents.
- 2082. — Other particular persons.
- 2083. Pleading.
- 2084. — In general.
- 2085. — Issues, proof, and variance.
- 2086. Discovery and disclosure in general.
- 2087. Reports and recommendations; examinations and assessments.
- 2088. — In general.
- 2089. — Physical, mental, and other examinations.
- 2090. — Home studies and similar assessments.
- 2091. — Multiple or independent examinations; appointment of professionals.
- 2092. Dismissal.
- 2093. Hearing.
- 2094. — In general; nature and purpose.
- 2095. — Necessity; right to hearing.

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XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2096. — Course and conduct.
- 2097. — Presence of parties and counsel.
- 2098. — Public access; closure.
- 2099. — Disposition proceedings.
- 2100. Time for hearing.
- 2101. Continuance.
- 2102. Guardian ad litem or other representative.
Counsel, see XIV(I).
- 2103. Reference.
- 2104. Reception of evidence; witnesses.
- 2105. Interview or hearing as to child evidence or testimony.
- 2106. Questions of fact or law.
- 2107. Instructions.
- 2108. Determination and findings.
- 2109. Rehearing and new trial.
- 2110. Costs and fees.
- 2111. — In general.
- 2112. — Attorney fees.
- 2113. — Stage or condition of cause.

(F) EVIDENCE.

- 2121. In general.
- 2122. Application of rules of evidence in general.
- 2123. Judicial notice.
- 2124. Presumptions, inferences, and burden of proof; prima facie rights.
- 2125. — In general.
- 2126. — Children in need of supervision in general.
- 2127. — Dependency, permanency, and rights termination in general.
- 2128. — Welfare and best interest of child.
- 2129. — Care, custody, and control by parent.
- 2130. — Fitness of parent.
- 2131. — Deprivation, neglect, or abuse.
- 2132. — Deprivation of services.
- 2133. — Abandonment, absence, and non-support.
- 2134. — Rehabilitation and reunification efforts.
- 2135. — Reports, recommendations, and studies.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2136. — Disposition and placement of child.
- 2137. Admissibility.
- 2138. — In general; necessity.
- 2139. — Conduct, circumstances, and character in general.
- 2140. — Therapy and treatment.
- 2141. — Other proceedings and dispositions.
- 2142. — Other misconduct or conviction.
- 2143. — Evidence wrongfully obtained.
- 2144. — Demonstrative evidence.
- 2145. — Computer evidence in general.
Documentary evidence, see ¶2150(2).
- 2146. — Declarations, admissions, and statements.
 - (1). In general.
 - (2). By parent or person in parental position.
 - (3). By child.
 - (4). — In general.
 - (5). — Child hearsay in general; procedure for admission.
 - (6). — Unavailability to testify.
 - (7). — Interviews, investigative questioning, and summaries thereof.
 - (8). — Other hearsay exceptions in general; trustworthiness and reliability.
 - (9). — Complaint; outcry.
 - (10). — Accusations against persons other than subject parent.
 - (11). — Necessity and sufficiency of corroboration.
- 2147. — Failure or delay in complaining.
- 2148. — Nonverbal communication; dolls, gestures, and illustrations.
- 2149. — False statements and recantations by child.
- 2150. — Documentary evidence.
 - (1). In general.
 - (2). Computerized evidence and print-outs.
 - (3). Private writings and electronic communications.
 - (4). Judicial proceedings, prosecutions, and orders.

211. INFANTS

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- (5). Reports in general.
- (6). Law enforcement records and investigations.
- (7). Agency investigations, studies, and reports.
- (8). Reports of court-appointed professionals and guardian ad litem.
- (9). Medical records and reports.
- (10). Photographs, videos, and recordings.
- 2151. — Transcripts and former testimony.
- 2152. — Experiments, tests, and samples.
- 2153. — Expert and opinion evidence.
 - (1). In general.
 - (2). Medical professionals in general.
 - (3). Mental health professionals.
 - (4). Case and social workers.
- 2154. — Dispositional alternatives; prospects and suitability.
- 2155. Degree of proof.
- 2156. — In general.
- 2157. — Dependency, permanency, and rights termination in general.
- 2158. — Parental unfitness or incompetence in general.
- 2159. — Deprivation, neglect, or abuse.
- 2160. — Deprivation of services.
- 2161. — Abandonment or absence.
- 2162. — Disposition, placement, and custody.
- 2163. Weight and sufficiency.
- 2164. — In general.
- 2165. — Latitude and discretion in general.
- 2166. — Credibility, weight, and defects in general.
- 2167. — Parentage, de facto parents, and persons in loco parentis.
- 2168. — Children in need of supervision.
- 2169. — Dependency, permanency, and rights termination.
 - (1). In general.
 - (2). Adoptability; likelihood and probability of adoption.
 - (3). Parental unfitness or incompetence.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- (4). Deprivation, neglect, or abuse.
- (5). — In general.
- (6). — Living conditions; clothing, food, and housing.
- (7). — Endangerment and supervision.
- (8). — Drug and alcohol abuse, dependency, and exposure.
- (9). — Violence and crime.
- (10). — Child abuse and molestation.
- (11). — Sibling and derivative neglect or abuse.
- (12). Deprivation of services or education.
- (13). Abandonment, absence, and nonsupport.
- (14). Relationship or bond with child.
- (15). Rehabilitation and reunification efforts.
- 2170. — Disposition, placement, and custody.
 - (1). In general.
 - (2). Visitation.
- 2171. — Child statements and testimony; sufficiency and corroboration.
- 2172. — Necessity of expert testimony.
- 2173. — Manner and conduct of proceedings.

(G) JUDGMENT, ORDER, AND DISPOSITION.

1. IN GENERAL.

- 2181. In general.
- 2182. Summary judgment.
- 2183. Requisites and validity in general.
- 2184. Construction, operation, and effect in general.
- 2185. Amendment or correction.
- 2186. Time of taking effect; retroactivity.
- 2187. Opening and vacating.
- 2188. — In general; authority and discretion.
- 2189. — Grounds, factors, and considerations in general.
- 2190. — Needs, interest, and welfare of child.

211. INFANTS

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2191. — Defects as to jurisdiction or process.
- 2192. — Absence, waiver, or ineffectiveness of counsel.
- 2193. — Fraud, and defects or insufficiency as to evidence; new evidence.
- 2194. — Consent, relinquishment, or plea.
- 2195. — Proceedings on motion in general.
- 2196. — Time for motion, proceedings, or ruling.
- 2197. — Jurisdiction and venue.
- 2198. — Pleading, notice, and process on motion.
- 2199. — Discovery, disclosure, and examinations.
- 2200. — Evidence.
- 2201. — Hearing.
- 2202. — Determination and findings.
- 2203. — Judgment or order; relief and effect.
- 2204. Default, and opening and vacating thereof.
- 2205. Res judicata and conclusiveness.
- 2206. Retention or reservation of jurisdiction.

2. NATURE AND SCOPE OF DISPOSITION.

- 2211. In general.
- 2212. Construction, operation, and effect in general.
- 2213. Return to subject parent or party.
- 2214. Placement or custody.
- 2215. — In general.
- 2216. — Authority and discretion as to selection in general.
- 2217. — Needs, interest, and welfare of child in general.
- 2218. — Rights of subject parent or party in general.
Return to subject parent or party as disposition, see §2213. Visitation, see §2238.
- 2219. — Other parent or stepparent.
- 2220. — Guardians and guardianships.
- 2221. — Adoptive placement.
- 2222. — Relatives in general.
- 2223. — Grandparents.
- 2224. — De facto parent.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2225. — Cohabitants and domestic partners.
- 2226. — Sexual orientation and transgender issues.
- 2227. — Same-sex partners.
- 2228. Conditions of placement or custody.
- 2229. Mental commitment, treatment, or therapy.
- 2230. — In general.
- 2231. — Counseling and therapy in general.
- 2232. — Anger management.
- 2233. — Chemical dependents.
- 2234. — Commitment or treatment of children.
- 2235. Foster care and institutional placement.
- 2236. Planned permanent living arrangements.
- 2237. Inter-jurisdictional placement.
- 2238. Visitation issues.
- 2239. Special needs children.
- 2240. Alternative dispositions; suspension of judgment.
- 2241. — In general.
- 2242. — Terms and conditions.
- 2243. — Revocation; proceedings.

3. IMPLEMENTATION AND ENFORCEMENT.

- 2251. In general.
- 2252. Role of agency in general.
- 2253. Enforcement in general; proceedings.
- 2254. Private enforcement; right of action.

4. AMENDMENT, EXTENSION, OR MODIFICATION; PERIODIC REVIEW.

- Modification of protective custody, see §1847.*
- 2261. In general.
- 2262. Authority and discretion in general.
- 2263. Grounds, factors, and considerations in general.
- 2264. Needs, interest, and welfare of child in general.
- 2265. Periodic review.
- 2266. — In general.
- 2267. — Necessity and entitlement.
- 2268. — Judicial review in general; scope of inquiry or authority.
Proceedings on judicial review, see §2286.

211. INFANTS

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2269. Placement or custody.
- 2270. — In general.
- 2271. — Of, from, or between family or relatives.
- 2272. — Of, from, or between parents or persons in position thereof.
- 2273. — Of or from agency placement or custody.
- 2274. Change or extension of, or removal from, foster or institutional care.
- 2275. — In general.
- 2276. — Protective custody or removal.
- 2277. — Grounds, factors, and considerations.
- 2278. — Transfers between foster parents or facilities, or to agency.
- 2279. — Transfers to alternate placement.
- 2280. Adoptive placement or custody.
- 2281. Mental commitment, treatment, or therapy.
- 2282. Change of permanent plan or goal.
- 2283. Return to subject parent or parent figure; reinstatement of parental rights.
- 2284. Visitation issues.
- 2285. Special needs children.
- 2286. Proceedings.
- 2287. — In general.
- 2288. — Time for motion, proceedings, or ruling.
- 2289. — Jurisdiction and venue.
- 2290. — Parties, intervention, and standing.
- 2291. — Pleading, notice, and process on motion.
- 2292. — Discovery, disclosure, and examinations.
- 2293. — Evidence.
- 2294. — Hearing.
- 2295. — Determination and findings.
- 2296. — Judgment or order; relief and effect.

(H) TERMINATION OF JURISDICTION OR DEPENDENCY.

- 2301. In general.
- 2302. Grounds, factors, and considerations in general.

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2303. Placement or custody; continuation or termination.
- 2304. Return to subject parent or party.
- 2305. Visitation issues.
- 2306. Effect of age, majority, or emancipation.
- 2307. Proceedings; effect of termination.

(I) LIABILITIES OF CARE AND MAINTENANCE.

- 2311. In general.
- 2312. Liability for support in general.
- 2313. — In general.
- 2314. — Parents.
- 2315. — Government or agency.
- 2316. Particular services and treatment.
- 2317. — In general.
- 2318. — Foster and institutional care.
- 2319. — Medical and dental care.
- 2320. — Counseling and mental health care.
- 2321. Proceedings, interjurisdictional issues, and modification.

(J) COUNSEL.

- 2331. In general.
- 2332. Right to counsel.
- 2333. — In general.
- 2334. — Children in general.
- 2335. — Parent or parent figure in general.
- 2336. — Stage or condition of cause.
 - (1). In general.
 - (2). Protective custody and removal.
 - (3). Trial or adjudication.
 - (4). Disposition.
 - (5). Liabilities of care, maintenance, and support.
 - (6). Other post-trial proceedings and appeal.
- 2337. — Waiver; self-representation.
- 2338. — Indigents and paupers; public defenders.

Appointment on appeal, see ¶2399.
- 2339. — Third parties.
- 2340. Withdrawal and change of counsel.
- 2341. Eligibility and qualifications of counsel; conflicts of interest.

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**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2342. Arguments and conduct of counsel.
- 2343. Effectiveness of counsel.
- 2344. — In general.
- 2345. — Protective custody and removal.
- 2346. — Preliminary proceedings.
- 2347. — Trial or adjudication; instructions.
- 2348. — Evidence; procurement, presentation, and objections.
- 2349. — Disposition.
- 2350. — Other post-trial proceedings and appeal.
- 2351. Access to counsel; deprivation of services.
- 2352. Proceedings as to right or waiver.

(K) APPEAL AND REVIEW.

- 2361. In general.
- 2362. Decisions reviewable.
- 2363. — In general.
- 2364. — Nature, scope, and effect of decision in general.
- 2365. — Courts and other tribunals subject to review.
- 2366. — Rendition, form, and entry of judgment or order.
- 2367. — Interlocutory determinations and finality in general.
- 2368. — Protective custody and removal of child.
- 2369. — Children in need of supervision.
- 2370. — Dependency, permanency, and rights termination.
- 2371. — Rehabilitation and reunification efforts.
- 2372. — Disposition, placement, and custody.
- 2373. — Vacation, extension, and modification.
- 2374. Right of review and parties.
- 2375. — In general.
- 2376. — Parties and other persons affected or interested.
- 2377. — Aggrievement.
- 2378. Preservation of grounds for review.
- 2379. — In general.

**XIV. DEPENDENCY, PERMANENT CUSTODY,
AND TERMINATION OF RIGHTS;
CHILDREN IN NEED.(Cont'd)**

- 2380. — Issues and questions in lower court in general.
- 2381. — Objections and motions and rulings thereon.
- 2382. — Exceptions.
- 2383. — Motions for new trial.
- 2384. — Cases and questions reserved or certified.
- 2385. Perfection; notice and effect of appeal.
- 2386. — In general.
- 2387. — Time for proceedings.
- 2388. — Petition or prayer, allowance, and certificate or affidavit.
- 2389. — Payment of fees and costs; bond or other security.
- 2390. — Writ of error, citation, or notice of appeal.
- 2391. — Entry, docketing, and appearance.
- 2392. — Effect of transfer or perfection of appeal in general.
- 2393. — Supersedeas or stay of proceedings.
- 2394. Record.
- 2395. Briefs and assignments of error.
- 2396. Proceedings in forma pauperis.
- 2397. — In general.
- 2398. — Indigency and determination thereof.
- 2399. — Counsel.
- 2400. — Free record or transcript.
- 2401. — Frivolous or futile appeal.
- 2402. Dismissal and mootness.
- 2403. Hearing and rehearing.
- 2404. Scope, standards, and questions on review.
- 2405. — In general.
- 2406. — Questions considered.
- 2407. Trial or review de novo.
- 2408. Parties entitled to allege error; estoppel.
- 2409. Presumptions, inferences, and burden of proof.
- 2410. Discretion of lower court.
- 2411. Questions of fact and findings.
- 2412. — In general.
- 2413. — Protective custody and removal of child.

211. INFANTS

XIV. DEPENDENCY, PERMANENT CUSTODY, AND TERMINATION OF RIGHTS; CHILDREN IN NEED.(Cont'd)

- 2414. — Children in need of supervision.
- 2415. — Dependency, permanency, and rights termination.
 - (1). In general.
 - (2). Parental unfitness or incompetence.
 - (3). Deprivation, neglect, or abuse.
 - (4). Deprivation of services.
 - (5). Abandonment or absence.
- 2416. — Rehabilitation and reunification efforts.
- 2417. — Disposition, placement, and custody.
- 2418. — Failure or refusal to find.
- 2419. Harmless or prejudicial error.
- 2420. — In general.
- 2421. — Protective custody and removal of child.
- 2422. — Children in need of supervision.
- 2423. — Dependency, permanency, and rights termination.
- 2424. — Rehabilitation and reunification efforts.
- 2425. — Manner and conduct of proceedings in general.
- 2426. — Pleading, notice, and process.
- 2427. — Hearing, instructions, and issues relating to jury.
- 2428. — Determination, findings, and verdict.
- 2429. — Evidence, reception thereof, and witnesses in general.
- 2430. — Statements and declarations; hearsay.
- 2431. — Documentary evidence and reports.
- 2432. — Judgment, disposition, and placement.
- 2433. — Vacation, extension, and modification.
- 2434. — Counsel; arguments, conduct, and effectiveness.
- 2435. Determination and remand.

XV. JUVENILE JUSTICE.

(A) IN GENERAL.

- 2441. In general.

XV. JUVENILE JUSTICE.(Cont'd)

- 2442. Interest, role, and authority of government in general.
- 2443. Role, power, and authority of courts; discretion.
- 2444. Nature, form, and purpose of proceedings.
- 2445. — In general.
- 2446. — Application of criminal procedures.
- 2447. Age limitations.
- 2448. Responsibility for offense or violation.
- 2449. Capacity to commit offense or violation.
- 2450. Acts in aid, or under direction, of others.
- 2451. Defenses in general.
- 2452. Competency to commit offense or violation; insanity.
- 2453. Entrapment and outrageous conduct.

(B) PARTICULAR OFFENSES OR VIOLATIONS AND DEFENSES THERETO.

- 2461. In general.
- 2462. Arson and malicious mischief.
- 2463. Assault and battery.
- 2464. Burglary and home invasion.
- 2465. Computer offenses and data infringement.
- 2466. Disorderly conduct and breach of the peace.
- 2467. Drugs; controlled substances.
- 2468. False pretenses and forgery.
- 2469. Gang offenses, racketeering, and extortion.
- 2470. Homicide and assault with intent to kill.
- 2471. Kidnapping and false imprisonment.
- 2472. Larceny and receiving stolen property.
- 2473. Motor vehicle offenses.
- 2474. Obscenity and lewdness.
- 2475. Obstructing justice, resisting arrest, and perjury.
- 2476. Prohibited hours and premises; curfew.
- 2477. Prohibited products; tobacco and liquor.
- 2478. Prostitution and pimping.
- 2479. Sexual assault, rape, and sodomy.
- 2480. Robbery.
- 2481. School offenses and truancy.

211. INFANTS

XV. JUVENILE JUSTICE.(Cont'd)

- 2482. Trespass.
- 2483. Weapons, ammunition, and explosives.
- 2484. Other particular offenses.

(C) INVESTIGATION AND APPREHENSION.

- 2491. In general.
- 2492. Searches and seizures.
Waiver and consent, see SEARCHES AND SEIZURES V.
- 2493. — In general.
- 2494. — Warrant in general; exigent circumstances.
- 2495. — Probable cause.
- 2496. — Manner, duration, and scope.
- 2497. Stop, frisk, and investigatory detention.
- 2498. — In general.
- 2499. — Grounds, suspicion, or cause.
- 2500. — Manner, duration, and scope.
- 2501. — Vehicular stops.
- 2502. Arrest.
- 2503. — In general.
- 2504. — Warrant in general; exigent circumstances.
- 2505. — Probable cause.
- 2506. — Search incident to.
- 2507. Preliminary disposition in general; presentment to officer.
- 2508. Parental notice or contact by authorities.
- 2509. Booking, fingerprinting, and photographing.
- 2510. Tests and samples.
- 2511. Communication by juvenile with parent or third party.
- 2512. Detention pending release, trial, or disposition.
- 2513. — In general.
- 2514. — Necessity, grounds, and purpose.
- 2515. — Proceedings or hearing in general.
- 2516. — Time for proceedings or hearing.
- 2517. — Notice to or presence of parent.
- 2518. — Evidence.
- 2519. — Determination, disposition, and effect thereof.
- 2520. — Nature and place of confinement in general; transfers.
- 2521. — Duration and conditions of confinement; extension.

XV. JUVENILE JUSTICE.(Cont'd)

- 2522. — Liabilities of care and maintenance.
- 2523. Placement pendente lite.
- 2524. Bail or release on recognizance.
- 2525. — In general.
- 2526. — On appeal or review.

(D) PRELIMINARY PROCEEDINGS.

- 2531. In general.
- 2532. Preliminary inquiry by officer.
- 2533. Commencement or institution of charges.
- 2534. Arraignment and preliminary examination or hearing.
- 2535. — In general.
- 2536. — Ascertainment of cause; proceedings.
- 2537. — Advice and warnings.
- 2538. Bench warrants and pickup orders.
- 2539. Competency to stand trial; hearing.
- 2540. Pleas, plea agreements, and procedures.

(E) TRIAL AND ADJUDICATION.

- 2551. In general.
- 2552. Joinder and severance.
- 2553. Time for proceedings; laches.
- 2554. Jurisdiction and venue.
- 2555. Inter-jurisdictional issues; certification for federal proceeding.
- 2556. Notice and process.
- 2557. Appearance, presence, and participation in general.
Appearance, presence, and participation in or at hearings, see ¶2573.
- 2558. Parties.
- 2559. Pleading.
- 2560. — In general.
- 2561. — Issues, proof, and variance.
- 2562. Discovery and disclosure in general.
- 2563. Reports and recommendations.
- 2564. — In general.
- 2565. — Physical, mental, and other examinations.
- 2566. — Home studies and similar assessments.
- 2567. — Multiple or independent examinations; appointment of professionals.

211. INFANTS

XV. JUVENILE JUSTICE.(Cont'd)

- 2568. Dismissal or discontinuance.
- 2569. Hearing.
- 2570. — In general; nature and purpose.
- 2571. — Necessity; right to hearing.
- 2572. — Course and conduct.
- 2573. — Presence of parties and counsel.
- 2574. — Public access; closure.
- 2575. Time for hearing; speedy trial.
- 2576. Continuance.
- 2577. Guardian ad litem or other representative.
Counsel, see XV(1).
- 2578. Reference.
- 2579. Reception of evidence; witnesses.
- 2580. Questions of fact or law.
- 2581. Instructions.
- 2582. Determination and findings.
- 2583. Rehearing and new trial.
- 2584. Judgment, order, or adjudication.
- 2585. — In general.
- 2586. — Amendment, correction, or modification.
- 2587. — Construction, operation, and effect.
- 2588. — Res judicata and conclusiveness.
- 2589. Costs and fees.
- 2590. — In general.
- 2591. — Attorney fees.
- 2592. — Stage or condition of cause.

(F) EVIDENCE.

- 2601. In general.
- 2602. Application of rules of evidence in general.
- 2603. Judicial notice.
- 2604. Presumptions, inferences, and burden of proof.
- 2605. — In general.
- 2606. — Innocence.
- 2607. — Age.
- 2608. — Capacity and responsibility.
- 2609. — Notice.
- 2610. — Tampering, chain of custody, and illegal evidence.
- 2611. — Search, seizure, and arrest.
- 2612. — Confessions, admissions, and statements.
- 2613. — Offenses, violations, and defenses.

XV. JUVENILE JUSTICE.(Cont'd)

- 2614. — Intent, state of mind, and motive.
- 2615. — Identification and identity.
- 2616. — Circumstantial evidence.
- 2617. — Failure to appear; missing witness.
- 2618. Admissibility.
- 2619. — In general.
- 2620. — Other acts and offenses; character.
- 2621. — Evidence wrongfully obtained.
- 2622. — Age and identification.
- 2623. — Demonstrative evidence.
- 2624. — Computer evidence in general.
Documentary evidence, see 2626(2).
- 2625. — Confessions, admissions, and statements.
 - (1). In general.
 - (2). Child hearsay.
 - (3). — In general.
 - (4). — Procedure for admission; notice.
 - (5). — Unavailability to testify.
 - (6). — Interviews and summaries.
 - (7). — Hearsay exceptions in general; trustworthiness and reliability.
 - (8). — Complaint; outcry.
 - (9). — Accusations against third parties.
 - (10). — Necessity and sufficiency of corroboration.
 - (11). — Failure or delay in complaining in general.
 - (12). Interrogation and investigatory questioning.
 - (13). — In general.
 - (14). — Voluntariness in general.
 - (15). — Warnings and counsel; waivers.
 - (16). — Notice to, or consent of, parent or guardian.
 - (17). — Presence, availability, or consultation of parent or guardian.
 - (18). — Evidence as to circumstances and voluntariness.
 - (19). Statements of accomplices and codefendants.
- 2626. — Documentary evidence.

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XV. JUVENILE JUSTICE.(Cont'd)

- (1). In general.
- (2). Computerized evidence and print-outs.
- (3). Private writings and electronic communications.
- (4). Judicial proceedings, prosecutions, and orders.
- (5). Reports in general.
- (6). Law enforcement records and investigations.
- (7). Agency investigations, studies, and reports.
- (8). Reports of court-appointed professionals and guardian ad litem.
- (9). Medical records and reports.
- (10). Photographs.
2627. — Transcripts and former testimony.
2628. — Copies and secondary evidence.
2629. — Experiments, tests, and samples.
2630. — Expert and opinion evidence.
2631. — Testimony of accomplices and co-defendants.
2632. Degree of proof.
2633. — In general.
2634. — Reasonable doubt.
2635. Weight and sufficiency.
2636. — In general.
2637. — Credibility in general; child testimony.
2638. — Circumstantial evidence in general.
2639. — Defenses in general.
2640. — Particular offenses, violations, or defenses.
 - (1). In general.
 - (2). Assault and battery.
 - (3). Burglary and home invasion.
 - (4). Controlled substance offenses.
 - (5). Gang offenses.
 - (6). Homicide and assault to kill.
 - (7). Obstructing justice, resisting arrest, and perjury.
 - (8). Robbery, larceny, and possession of stolen property.
 - (9). Sex offenses.
 - (10). Trespass.
 - (11). Weapons, ammunition, and explosives.

XV. JUVENILE JUSTICE.(Cont'd)

2641. — Intent, state of mind, and motive.
 - (1). In general.
 - (2). Possess or distribute.
 - (3). Steal or receive.
 - (4). Damage to property.
 - (5). Injure or harm the person.
 - (6). Sex offenses.
 - (7). Inflict mortal injury; intent to kill.
2642. — Aiding and abetting; accomplice liability.
2643. — Age and identification.
2644. — Corroboration; necessity and sufficiency.
 - (1). In general.
 - (2). Child statements and testimony.
 - (3). Accomplice testimony.
2645. — Effect of confession, admission, or statement.

(G) DISPOSITION.

1. IN GENERAL.

2661. In general.
2662. Factors and considerations in general.

2. PARTICULAR DISPOSITIONS.

2671. In general.
2672. Placement or custody in general.
2673. Drug and alcohol abuse and treatment; chemical dependents.
2674. Mental health placement, commitment, and treatment.
2675. — In general.
2676. — Sex offenders.

Sex offender registration and community notification, see ¶3204.
2677. Other non-punitive order or disposition; third-party conduct.
2678. Liabilities of care and maintenance.

Care and maintenance in correctional facility, jail, industrial or reform school, or similar institution, see ¶3146.
2679. — In general.
2680. — Liability of parents.
2681. Correctional, restrictive, or rehabilitative custody or sentence.
2682. — In general.
2683. — Duration or term.
2684. — Factors considered.
 - (1). In general.

211. INFANTS

XV. JUVENILE JUSTICE.(Cont'd)

- (2). Factors related to offense.
- (3). Factors related to juvenile; repeat offenders.
- 2685. — Sentencing guidelines.
- 2686. — Credits.
- 2687. — Fines and restitution orders.
- 2688. Probation or suspension of sentence.
- 2689. — In general.
- 2690. — Grounds, factors, and considerations.
 - (1). In general.
 - (2). Factors related to offense.
 - (3). Factors related to juvenile.
- 2691. — Duration or term.
- 2692. — Conditions.
 - (1). In general.
 - (2). Particular conditions.
- 2693. — Incarceration and probation.
- 2694. — Supervision and searches.

3. DISPOSITION PROCEEDINGS.

Proceedings as to post-disposition violations, see ¶2733. Proceedings on particular motions, see lines for those motions.

- 2701. In general.
- 2702. Time for motion, proceedings, or ruling.
- 2703. Parties, intervention, and standing.
- 2704. Pleading, notice, and process.
- 2705. Discovery and disclosure.
- 2706. Reports and recommendations.
- 2707. — In general.
- 2708. — Physical, mental, and other examinations.
- 2709. — Home studies and similar assessments.
- 2710. — Predisposition investigation and reports.
- 2711. Hearing.
- 2712. Evidence.
- 2713. Determination, findings, and statement of reasons.
- 2714. Judgment or order; conclusiveness, operation, and effect.

4. AMENDMENT, MODIFICATION, AND REVOCATION.

- 2721. In general; authority and discretion.
- 2722. Amendment, modification, or extension of placement or custody in general.

XV. JUVENILE JUSTICE.(Cont'd)

- 2723. Amendment, modification, or extension of restrictive custody or sentence.
- 2724. — In general.
- 2725. — Increase or reduction of sanctions or punishment.
- 2726. — Place or conditions of confinement; programs and services.
- 2727. — Fines and restitution.
- 2728. — Probation, community control, or parole.
- 2729. Violations and defenses thereto.
- 2730. — In general.
- 2731. — Probation.
- 2732. — Validity of underlying adjudication; collateral attack.
- 2733. Proceedings.
- 2734. — In general.
- 2735. — Time for motion, proceedings, or ruling.
- 2736. — Jurisdiction and venue.
- 2737. — Parties, intervention, and standing.
- 2738. — Pleading, notice, and process.
- 2739. — Evidence.
- 2740. — Hearing and determination.
- 2741. — Findings and statement of reasons.
- 2742. Judgment or disposition on violation or revocation.
- 2743. — In general.
- 2744. — Reimposition or continuation of probation.
- 2745. — Modification or extension of probation.
- 2746. — Restrictive custody or sentence; credits.
- 2747. — Sentencing guidelines.
- 2748. — Amendment, correction, opening and vacating.
- 2749. Modification or extension based on mental illness; sex offenders.

5. ALTERNATIVE DISPOSITIONS; NON-WARDSHIP PROBATION AND DIVERSION.

- 2751. In general.
- 2752. Prior to judgment or adjudication; necessity of plea.
- 2753. After imposition of judgment; stay of commitment.

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XV. JUVENILE JUSTICE.(Cont'd)

2754. Conditions and satisfaction thereof.

2755. Violations and revocation, and proceedings thereon; restoration of prosecution.

6. HYBRID DISPOSITIONS; JUVENILE AND ADULT SANCTIONS.

2761. In general.

2762. Proceedings to impose.

2763. Violations and revocation; proceedings and succeeding prosecution.

7. EFFECT OF AGE, MAJORITY, OR EXPIRATION OF SENTENCE OR JURISDICTION.

2771. In general.

2772. Correctional or punitive disposition.

2773. Probation or suspension of sentence.

(H) OPENING AND VACATING; POST-ADJUDICATION RELIEF.

2781. In general.

2782. Nature and availability of remedy; other remedies.

2783. Authority and discretion in general.

2784. Grounds, factors, and considerations.

2785. — In general.

2786. — Change in law or fact.

2787. — Investigation or apprehension.

2788. — Plea and preliminary proceedings.

2789. — Trial and adjudication.

2790. — Evidentiary defect or insufficiency; new evidence.

2791. — Sentence, placement, or other disposition.

2792. — Probation.

2793. — Mental commitment or treatment.

2794. — Counsel; arguments, conduct, and effectiveness.

2795. — Rehabilitation and reform.

2796. — Correctional or rehabilitative custody.

2797. Proceedings.

2798. — In general.

2799. — Time for motion, proceedings, or ruling.

2800. — Jurisdiction and venue.

2801. — Parties, intervention, and standing.

XV. JUVENILE JUSTICE.(Cont'd)

2802. — Pleading, notice, and process on motion.

2803. — Evidence.

2804. — Hearing.

2805. — Determination and findings.

2806. — Judgment; conclusiveness.

2807. Scope of relief.

2808. — In general.

2809. — Resentencing.

(I) COUNSEL; PROSECUTORIAL MISCONDUCT.

Right to and waiver of counsel during interrogation, see §2625(15).

2821. In general.

2822. Right to counsel.

2823. — In general.

2824. — Stage or condition of cause.

(1). In general.

(2). Detention and preliminary proceedings.

(3). Jury selection and plea.

(4). Trial or adjudication.

(5). Sentencing or disposition.

(6). Mental commitment or treatment.

(7). Other post-trial proceedings and appeal.

2825. — Waiver; self-representation.

2826. — Indigents and paupers; public defenders.

Appointment on appeal, see §2900.

2827. — Parents and other third parties.

2828. Withdrawal and change of counsel.

2829. Eligibility and qualifications of counsel; conflicts of interest.

2830. — In general.

2831. — For government.

2832. — For defense.

2833. Arguments and conduct of counsel.

2834. — In general.

2835. — Preliminary and pretrial proceedings; jury selection.

2836. — Remarks and conduct at trial.

2837. — Opening statement and closing argument.

2838. — Loss or destruction of evidence.

2839. — Other particular conduct and arguments.

2840. Effectiveness of counsel.

2841. — In general.

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XV. JUVENILE JUSTICE.(Cont'd)

- 2842. — Detention and preliminary proceedings.
- 2843. — Jury selection and plea.
- 2844. — Trial or adjudication.
- 2845. — Evidence; procurement, presentation, and objections.
- 2846. — Sentencing or disposition.
- 2847. — Mental commitment or treatment.
- 2848. — Other post-trial proceedings and appeal.
- 2849. Access to counsel; deprivation of services.
- 2850. Proceedings as to right or waiver.

(J) APPEAL AND REVIEW.

- 2861. In general.
- 2862. Mode of review; jurisdiction and transfer thereof.
- 2863. Decisions reviewable.
- 2864. — In general.
- 2865. — Nature, scope, and effect of decision in general.
- 2866. — Courts and other tribunals subject to review.
- 2867. — Rendition, form, and entry of judgment or order.
- 2868. — Interlocutory determinations and finality in general.
- 2869. — Arrests, searches, stops, and detention.
- 2870. — Competency to stand trial.
- 2871. — Pleas, plea agreements, and procedures.
- 2872. — Manner and conduct of proceedings; evidence.
- 2873. — Judgment, disposition, and placement.
- 2874. — Sentence or punishment; restitution.
- 2875. — Probation and revocation thereof.
- 2876. — Mental health placement, commitment and treatment.
- 2877. — Modification, vacation, and post-adjudication relief.
- 2878. Right of review and parties.
- 2879. Preservation of grounds for review.
- 2880. — In general.

XV. JUVENILE JUSTICE.(Cont'd)

- 2881. — Issues and questions in lower court in general.
- 2882. — Objections and motions and rulings thereon.
- 2883. — Exceptions.
- 2884. — Motions for new trial.
- 2885. — Cases and questions reserved or certified.
- 2886. Perfection; notice and effect of appeal.
- 2887. — In general.
- 2888. — Time for petition, proceedings, or ruling.
- 2889. — Petition or prayer, allowance, and certificate or affidavit.
- 2890. — Payment of fees and costs; bond or other security.
- 2891. — Writ of error, citation, or notice of appeal.
- 2892. — Entry, docketing, and appearance.
- 2893. — Effect of transfer or perfection of appeal in general.
- 2894. — Supersedeas or stay of proceedings.
- 2895. Record.
- 2896. Briefs and assignments of error.
- 2897. Proceedings in forma pauperis.
- 2898. — In general.
- 2899. — Indigency and determination thereof.
- 2900. — Counsel.
Ineffective assistance of counsel on appeal, see
2848.
- 2901. — Free record or transcript.
- 2902. — Frivolous or futile appeal.
- 2903. Dismissal and mootness.
- 2904. Hearing and rehearing.
- 2905. Scope, standards, and questions on review.
- 2906. — In general.
- 2907. — Questions considered.
- 2908. Trial or review de novo.
- 2909. Parties entitled to allege error; estoppel.
- 2910. Presumptions, inferences, and burden of proof.
- 2911. Discretion of lower court.
- 2912. Questions of fact and findings.
- 2913. — In general.

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XV. JUVENILE JUSTICE.(Cont'd)

- 2914. — Arrests, searches, stops, and detention.
- 2915. — Competency to stand trial.
- 2916. — Pleas, plea agreements, and procedures.
- 2917. — Manner and conduct of proceedings; evidence.
- 2918. — Determination, judgment, and disposition.
- 2919. — Sentence or punishment; restitution.
- 2920. — Probation and revocation thereof.
- 2921. — Mental health placement, commitment, and treatment.
- 2922. — Modification, vacation, and post-adjudication relief.
- 2923. — Counsel; arguments, conduct, and effectiveness.
- 2924. Harmless or prejudicial error.
- 2925. — In general.
- 2926. — Arrests, searches, stops, and detention.
- 2927. — Competency to stand trial.
- 2928. — Pleas, plea agreements, and procedures.
- 2929. — Manner and conduct of proceedings in general.
- 2930. — Pleading, notice, and process.
- 2931. — Hearing, instructions, and issues relating to jury.
- 2932. — Determination, findings, and verdict.
- 2933. — Evidence, reception thereof, and witnesses.
- 2934. — Confessions, admissions, and statements; hearsay.
- 2935. — Documentary evidence and reports.
- 2936. — Judgment, disposition, and placement.
- 2937. — Sentence or punishment; restitution.
- 2938. — Probation and revocation thereof.
- 2939. — Mental health placement, commitment, and treatment.
- 2940. — Modification, vacation, and post-adjudication relief.
- 2941. — Counsel; arguments, conduct, and effectiveness.

XV. JUVENILE JUSTICE.(Cont'd)

- 2942. Determination and remand.
- 2943. — In general.
- 2944. — Remand in general.
- 2945. — Compliance with mandate; proceedings after remand.
- 2946. — Ordering new trial.

XVI. RIGHTS AND PRIVILEGES AS TO ADULT PROSECUTIONS.

(A) IN GENERAL.

- 2951. In general.
- 2952. Right to juvenile prosecution or treatment.
- 2953. Interest, role, and authority of government in general; public policy.
- 2954. Role, power, and authority of courts.
- 2955. Application of criminal or adult procedures.
- 2956. Notification of parent, guardian, or representative.
- 2957. Jurisdiction of adult or juvenile court.
- 2958. Effect of age, majority, or emancipation.
- 2959. Nature of crime or offense.
- 2960. Evidence.

(B) JUVENILE TRANSFERS AND CERTIFICATIONS.

- 2971. In general.
- 2972. Estoppel, waiver, or consent by juvenile.
- 2973. Mandatory or automatic transfer for adult prosecution.
- 2974. Role, authority, and discretion of prosecutor.
- 2975. — In general.
- 2976. — Nature of crime or offense.
- 2977. — Certification of juvenile or records.
- 2978. Waiver by court for adult prosecution.
Waiver under young offender statutes, see §3028.
- 2979. — In general.
- 2980. — Nature and purpose.
- 2981. — Necessity and compliance in general.
- 2982. — Proceedings in general.
- 2983. — Application of criminal procedures.
- 2984. — Time for motion, proceedings, or ruling.

211. INFANTS

**XVI. RIGHTS AND PRIVILEGES AS TO
ADULT PROSECUTIONS.(Cont'd)**

- 2985. — Pleading, notice, and process.
- 2986. — Discovery, disclosure, and examinations.
- 2987. — Investigation and inquiry in general.
- 2988. — Grounds, factors, and considerations.
- 2989. — Evidence.
 - (1). In general.
 - (2). Presumptions, inferences, and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 2990. — Hearing in general and time therefor.
- 2991. — Questions of fact or law.
- 2992. — Counsel or guardian ad litem.
- 2993. — Determination and findings.
- 2994. — Rehearing and new trial.
- 2995. — Judgment, order, or certificate.
- 2996. — Construction, operation, and effect in general.
- 2997. Operation and effect as to proceedings after transfer.
- 2998. Time for adult proceedings or trial after transfer.
- 2999. Transfer from adult court.
- 3000. Costs and fees; indigents.

(C) SENTENCING OF MINORS AS ADULTS.

Sentencing under young offender statutes, see XVI(D).

- 3011. In general.
- 3012. Hybrid dispositions; juvenile and adult sanctions.
- 3013. Effect of age or majority; extension of jurisdiction as to sentence.

**(D) YOUNG OFFENDER TREATMENT
AND SENTENCE.**

- 3021. In general.
- 3022. Nature, purpose, and goals.
- 3023. Right to young offender treatment or sentence in general.
- 3024. Factors and considerations in general.
- 3025. Age and age limitations.
- 3026. Nature and circumstances of crime or offense.
- 3027. Jurisdiction of adult or juvenile court in general.

**XVI. RIGHTS AND PRIVILEGES AS TO
ADULT PROSECUTIONS.(Cont'd)**

- 3028. Waiver or transfer for adult prosecution.
- 3029. — In general.
- 3030. — Proceedings.
- 3031. Adult prosecution and proceedings issues in general.
- 3032. Operation and effect of status or conviction; vacatur.
- 3033. Sentence or punishment.
- 3034. — In general.
- 3035. — Authority and discretion in general.
- 3036. — Eligibility, suitability, and benefit.
 - (1). In general.
 - (2). Necessity of determination.
 - (3). Factors and considerations in general.
 - (4). Age and age limitations.
 - (5). Nature of crime or offense.
- 3037. — Sentencing procedure in general.
- 3038. — Presentence investigation and reports.
- 3039. — Findings and statement of reasons.
- 3040. — Alternatives and options.
- 3041. — Length or duration of sentence.
- 3042. — Aggravating and mitigating circumstances.
- 3043. — Determinate or indeterminate sentence.
- 3044. — Commencement of sentence; tolling.
- 3045. — Multiple convictions or counts.
- 3046. — Prior, concurrent, or consecutive sentence.
- 3047. — Credits.
- 3048. — Fines and restitution orders.
- 3049. — Probation, and parole as a sentence.
 - (1). In general.
 - (2). Conditions.
 - (3). Incarceration and probation or parole.
 - (4). Violations and revocation; proceedings.
- 3050. — Hybrid dispositions; juvenile and adult sanctions.

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XVI. RIGHTS AND PRIVILEGES AS TO ADULT PROSECUTIONS.(Cont'd)

- 3051. — Modification, vacation, or correction; periodic review.
- 3052. — Resentencing.
- 3053. Private right of action.

(E) APPEAL AND REVIEW.

Appeal and review issues in criminal prosecutions in general, see CRIMINAL LAW.

- 3061. In general.
- 3062. Decisions reviewable.
- 3063. — In general.
- 3064. — Nature, scope, and effect of decision in general.
- 3065. — Courts and other tribunals subject to review.
- 3066. — Rendition, form, and entry of judgment or order.
- 3067. — Interlocutory determinations and finality in general.
- 3068. — Juvenile transfers and certifications.
- 3069. — Young offender treatment and sentence.
- 3070. Right of review and parties.
- 3071. Preservation of grounds for review.
- 3072. Perfection; notice and effect of appeal.
- 3073. Record.
- 3074. Briefs and assignments of error.
- 3075. Proceedings in forma pauperis.
- 3076. — In general.
- 3077. — Indigency and determination thereof.
- 3078. — Counsel.
- 3079. — Free record or transcript.
- 3080. — Frivolous or futile appeal.
- 3081. Dismissal and mootness.
- 3082. Hearing and rehearing.
- 3083. Scope, standards, and questions on review.
- 3084. — In general.
- 3085. — Questions considered in general.
- 3086. — Juvenile transfers and certifications.
- 3087. — Young offender treatment and sentence.
- 3088. Trial or review de novo.
- 3089. Parties entitled to allege error; estoppel.

XVI. RIGHTS AND PRIVILEGES AS TO ADULT PROSECUTIONS.(Cont'd)

- 3090. Presumptions, inferences, and burden of proof.
- 3091. — In general.
- 3092. — Juvenile transfers and certifications.
- 3093. — Young offender treatment and sentence.
- 3094. Discretion of lower court.
- 3095. — In general.
- 3096. — Juvenile transfers and certifications.
- 3097. — Young offender treatment and sentence.
- 3098. Questions of fact and findings.
- 3099. — In general.
- 3100. — Juvenile transfers and certifications.
- 3101. — Young offender treatment and sentence.
- 3102. Harmless or prejudicial error.
- 3103. — In general.
- 3104. — Juvenile transfers and certifications in general.
- 3105. — Manner and conduct of proceedings in general.
- 3106. — Notice, process, and pleading.
- 3107. — Hearing, instructions, and issues relating to jury.
- 3108. — Determination, findings, and verdict.
- 3109. — Evidence, reception thereof, and witnesses.
- 3110. — Young offender treatment and sentence.
- 3111. — Counsel; arguments, conduct, and effectiveness.
- 3112. Determination and remand.

XVII. CORRECTIONAL AND REHABILITATIVE CUSTODY.

- 3121. In general.
- 3122. Establishment and maintenance.
- 3123. Management and operation in general.
- 3124. Officers and employees.
- 3125. — In general.
- 3126. — Eligibility and qualifications; hiring or appointment.
- 3127. — Compensation and benefits.

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XVII. CORRECTIONAL AND REHABILITATIVE CUSTODY.(Cont'd)

- 3128. — Authority and powers.
- 3129. — Duties, responsibilities, and liabilities.
- 3130. — Immunity.
- 3131. — Tenure, discipline, and discharge.
- 3132. — Offenses.
- 3133. Conditions of confinement.
- 3134. — In general.
- 3135. — Programs in general.
- 3136. — Rights and privileges in general.
- 3137. — Access to courts; library and assistance.
- 3138. — Food and housing.
- 3139. — Health care.
- 3140. — Contraband; searches and confiscation.
- 3141. Place of confinement.
- 3142. — In general.
- 3143. — Acceptance, assignment, and classification.
- 3144. — Solitary confinement and segregation.
- 3145. — Transfer.
- 3146. Liabilities of care and maintenance.
- 3147. Discipline.
- 3148. — In general.
- 3149. — Grounds.
- 3150. — Proceedings.
- 3151. — Punishment.
- 3152. Duration of confinement.
- 3153. — In general.
- 3154. — Credits; good behavior.
- 3155. — Conditional release or furlough.
- 3156. Parole or aftercare.
- 3157. Discharge.

XVIII. RECORDS.

- 3161. In general.
- 3162. Maintenance; purpose and accuracy.
- 3163. Access and dissemination; confidentiality.
- 3164. Sealing and redaction.
- 3165. Expungement or correction.
- 3166. Proceedings on application, evidence, and appeal.
- 3167. Child protection records.
Criminal records in general, see CRIMINAL LAW.
- 3168. — In general.

XVIII. RECORDS.(Cont'd)

- 3169. — Maintenance; purpose and accuracy.
- 3170. — Access and dissemination; confidentiality.
- 3171. — Sealing and redaction.
- 3172. — Expungement or correction.
- 3173. — Neglect, dependency, or termination.
- 3174. — Child abuse.
- 3175. — Foster or institutional care or placement.
- 3176. — Special needs children.
- 3177. — Effect of dismissal or nonsuit.
- 3178. — Scope and extent of use.
- 3179. — Estoppel and waiver.
- 3180. — Proceedings and review.
 - (1). In general; standards and scope.
 - (2). Right of action, parties, and standing.
 - (3). Time for motion, proceedings, or ruling.
 - (4). Jurisdiction and venue.
 - (5). Pleading, notice, and process.
 - (6). Discovery and disclosure.
 - (7). In camera examination.
 - (8). Evidence.
 - (9). Hearing; counsel.
 - (10). Determination and findings.
 - (11). Judgment, remedies, and relief.
 - (12). Appeal.
- 3181. Juvenile delinquent and offender records.
- 3182. — In general.
- 3183. — Pretrial proffer or certificate of non-existence.
- 3184. — Maintenance; purpose and accuracy.
- 3185. — Access and dissemination; confidentiality.
- 3186. — Sealing and redaction.
- 3187. — Expungement or correction.
- 3188. — Offender registry or index.
- 3189. — Law enforcement records in general; use and sharing.
- 3190. — Statistical, historical, and other non-identifying information.
- 3191. — Name, photo, or likeness.
- 3192. — Arrest, detention, and transfer.
- 3193. — Adjudication or conviction.

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XVIII. RECORDS.(Cont'd)

- 3194. — Sentence, punishment, or disposition; presentence report.
- 3195. — Effect of acquittal, dismissal, set-aside, or discharge.
- 3196. — Scope and extent of use in criminal prosecution.
 - (1). In general.
 - (2). By subject of records.
- 3197. — Background checks and inquiries.
- 3198. — Estoppel or waiver.
- 3199. — Proceedings and review.
- 3200. — In camera examination.
- 3201. Mental health records.
- 3202. Juvenile sex offenders.
- 3203. — In general.
- 3204. — Registration and notification.

212. INJUNCTION

SUBJECTS INCLUDED

- General law and principles relating to permanent injunctions, preliminary or temporary injunctions and temporary restraining orders; their issuance, continuance, modification, termination, and enforcement, and proceedings relating thereto
- Liabilities for wrongful procurement of injunction, whether pursuant to or apart from bond or other security
- Grounds for, and construction, scope, and enforcement of, various particular injunctions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Abortion and birth control, injunctions relating to, see ABORTION AND BIRTH CONTROL
- Aliens, injunctions relating to detention, removal, and asylum, see ALIENS, IMMIGRATION, AND CITIZENSHIP
- Antitrust regulation, injunctions relating to, see ANTITRUST AND TRADE REGULATION

- Arbitration, injunctions to preclude or support, see ALTERNATIVE DISPUTE RESOLUTION
- Bankruptcy Code and bankruptcy court's equity powers, injunctions issued pursuant to, see BANKRUPTCY
- Banks, injunctions in actions involving, see FINANCE, BANKING, AND CREDIT
- Civil rights acts, injunctions issued pursuant to, see CIVIL RIGHTS
- Commodity futures regulation, injunctions relating to, see COMMODITY FUTURES TRADING REGULATION
- Consumer credit statutes, injunctions enforcing, see FINANCE, BANKING, AND CREDIT
- Consumer protection statutes, injunctions enforcing, see ANTITRUST AND TRADE REGULATION
- Copyright infringement, injunctions against, see COPYRIGHTS AND INTELLECTUAL PROPERTY
- Court of International Trade, injunctions granted by, see CUSTOMS DUTIES
- Easements, injunctions in proceedings to establish or protect, see EASEMENTS
- Ejectment actions, injunctions in, see EJECTMENT
- Eminent domain and inverse condemnation, injunctions relating to, see EMINENT DOMAIN
- Environmental protection regulations, injunctions enforcing, see ENVIRONMENTAL LAW
- Execution on judgments, injunctions to restrain, see CREDITORS' REMEDIES
- Fair Credit Reporting Act, injunctions issued pursuant to, see FINANCE, BANKING, AND CREDIT
- Gag orders in criminal and civil actions, see CRIMINAL LAW, FEDERAL CIVIL PROCEDURE, and TRIAL
- Judgment, restraining enforcement of, see JUDGMENT
- Labor relations acts, injunctions enforcing, see LABOR AND EMPLOYMENT
- Liquor regulations, injunctions enforcing, see INTOXICATING LIQUORS
- Mechanics' liens, enforcement or restraining enforcement of, see MECHANICS' LIENS

212. INJUNCTION

Mining, including oil and gas production, injunctions relating to, see MINES AND MINERALS

Mortgage foreclosures, injunctions relating to, see MORTGAGES AND DEEDS OF TRUST and CHATTEL MORTGAGES

Nuisances, enjoining and abatement of, see NUISANCES

Patents and patent infringement, injunctions relating to, see PATENTS

Prescription drugs and medical devices, injunctions in proceedings to approve, see HEALTH

Protective orders and prevention of mistreatment or abuse, see PROTECTION OF ENDANGERED PERSONS and INFANTS

Public records, injunctions in proceedings to disclose, see RECORDS

Quiet title actions, injunctions in, see QUIETING TITLE

Securities regulation, injunctions relating to, see SECURITIES REGULATION

Specific performance of contracts, injunctions relating to, see SPECIFIC PERFORMANCE

Tax assessment and collection, injunctions relating to, see INTERNAL REVENUE and TAXATION

Taxpayer suits to enjoin governmental action, see COUNTIES, MUNICIPAL CORPORATIONS, STATES, TOWNS, and UNITED STATES

Telecommunication regulation, injunctions relating to, see TELECOMMUNICATIONS

Trademarks, injunctions relating to, see TRADEMARKS

Trusts, injunctions in actions to establish or enforce, see TRUSTS

Unemployment compensation, injunctions relating to, see UNEMPLOYMENT COMPENSATION

Unfair trade practices statutes, injunctions enforcing, see ANTITRUST AND TRADE REGULATION

Wage and hour regulations, injunctions enforcing, see LABOR AND EMPLOYMENT

Wartime and national security measures, injunctions enforcing, see WAR AND NATIONAL EMERGENCY

Water ownership, supply, and regulation, injunctions relating to, see WATER LAW

Workers' compensation awards, injunctions against, see WORKERS' COMPENSATION

Zoning and land use regulation, injunctions relating to, see ZONING AND PLANNING

I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL, ¶1001-1070.

(A) NATURE, FORM, AND SCOPE OF REMEDY, ¶1001-1030.

(B) FACTORS CONSIDERED IN GENERAL, ¶1031-1070.

II. PRELIMINARY, TEMPORARY, AND INTERLOCUTORY INJUNCTIONS IN GENERAL, ¶1071-1120.

(A) NATURE, FORM, AND SCOPE OF REMEDY, ¶1071-1090.

(B) FACTORS CONSIDERED IN GENERAL, ¶1091-1120.

III. TEMPORARY RESTRAINING ORDERS IN GENERAL, ¶1121-1150.

(A) NATURE, FORM, AND SCOPE OF REMEDY, ¶1121-1130.

(B) FACTORS CONSIDERED IN GENERAL, ¶1131-1150.

IV. PARTICULAR SUBJECTS OF RELIEF, ¶1151-1500.

(A) COURTS AND ACTIONS IN GENERAL, ¶1151-1180.

(B) ADMINISTRATIVE AGENCIES AND PROCEEDINGS IN GENERAL, ¶1181-1190.

(C) CRIMINAL MATTERS AND PROCEEDINGS, ¶1191-1210.

(D) PROPERTY IN GENERAL, ¶1211-1240.

(E) GOVERNMENTS, LAWS, AND REGULATIONS IN GENERAL, ¶1241-1260.

(F) GOVERNMENT PROPERTY, FACILITIES, FUNDS, AND REVENUE, ¶1261-1280.

(G) SOCIAL SECURITY, WELFARE, AND OTHER PUBLIC PAYMENTS, ¶1281-1300.

(H) EMPLOYMENT AND COMPENSATION, ¶1301-1310.

(I) EDUCATION, ¶1311-1340.

(J) ELECTIONS, VOTING, AND POLITICAL RIGHTS, ¶1341-1350.

(K) CONTRACTS, ¶1351-1360.

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IV. PARTICULAR SUBJECTS OF RELIEF—Cont'd

- (L) TRADE OR BUSINESS, ¶1361–1390.
- (M) ANIMALS AND PLANTS, ¶1391–1400.
- (N) HEALTH, ¶1401–1410.
- (O) MOTOR VEHICLES, ¶1411–1420.
- (P) CARRIERS AND PUBLIC UTILITIES, ¶1421–1440.
- (Q) FAMILIES AND CHILDREN, ¶1441–1450.
- (R) TORT OR FINANCIAL LIABILITIES, ¶1451–1460.
- (S) CORPORATIONS AND OTHER PRIVATE ORGANIZATIONS, ¶1461–1490.
- (T) OTHER PARTICULAR MATTERS, ¶1491–1500.

V. ACTIONS AND PROCEEDINGS, ¶1501–1650.

- (A) IN GENERAL, ¶1501–1520.
- (B) PARTIES, ¶1521–1530.
- (C) NOTICE, ¶1531–1540.
- (D) PLEADING, ¶1541–1560.
- (E) EVIDENCE, ¶1561–1580.
- (F) TRIAL OR HEARING, ¶1581–1590.
- (G) DETERMINATION, ¶1591–1600.
- (H) COSTS AND FEES, ¶1601–1610.
- (I) CONTINUING, MODIFYING, OR TERMINATING, ¶1611–1650.

VI. BONDS AND OTHER SECURITY, ¶1651–1710.

- (A) REQUIREMENT IN GENERAL, ¶1651–1670.
- (B) ENFORCEMENT AND LIABILITY, ¶1671–1680.
- (C) ACTIONS ON BONDS, ¶1681–1710.

VII. VIOLATION AND ENFORCEMENT, ¶1711–1810.

- (A) NATURE AND FACTORS OF ENFORCEMENT, ¶1711–1760.
- (B) PROCEEDINGS FOR ENFORCEMENT, ¶1761–1810.

VIII. WRONGFUL INJUNCTION, ¶1811–1835.

- (A) NATURE AND GROUNDS OF LIABILITY, ¶1811–1820.
- (B) PROCEEDINGS FOR DAMAGES, ¶1821–1835.

I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL.

(A) NATURE, FORM, AND SCOPE OF REMEDY.

- 1001. In general.
- 1002. Nature of remedy in general.
- 1003. Purpose or function of remedy.

I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL.(Cont'd)

- 1004. Equitable nature of remedy.
- 1005. In personam nature of remedy.
- 1006. Prospective, preventive, or future-oriented nature of remedy.
- 1007. Extraordinary or unusual nature of remedy.
- 1008. Discretionary nature of remedy.
- 1009. — In general.
- 1010. — Abuse of discretion.
- 1011. Prohibitory nature; preservation of status quo.
- 1012. Mandatory injunctions; restoration of status quo.
- 1013. Scope of relief in general.
- 1014. — In general.
- 1015. — Discretion as to scope of relief.
- 1016. — Specificity, vagueness, overbreadth, and narrowly-tailored relief.
- 1017. — Duration of relief.
- 1018. — Geographical scope of relief.
- 1019. Constitutional and statutory provisions.
- 1020. — In general.
- 1021. — Validity.
- 1022. — Construction in general.
- 1023. — Prospective or retroactive application.
- 1024. Preemption.

(B) FACTORS CONSIDERED IN GENERAL.

- 1031. In general.
- 1032. Grounds in general; multiple factors.
- 1033. Balancing or weighing factors; sliding scale.
- 1034. Actual success on merits.
- 1035. Clear, unequivocal or existing right to relief.
- 1036. Equitable considerations in general; fairness.
- 1037. — In general.
- 1038. — Balancing or weighing equities.
- 1039. Public interest considerations.
- 1040. Necessity and effect of statutory authorization.
- 1041. Injury, hardship, harm, or effect.
- 1042. — In general.
- 1043. — Unclear, unlikely, doubtful or speculative injury.

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I. INJUNCTIONS IN GENERAL; PERMANENT INJUNCTIONS IN GENERAL.(Cont'd)

- 1044. — Clear, likely, threatened, anticipated, or intended injury.
- 1045. — Substantial nature of injury.
- 1046. — Irreparable injury.
- 1047. — Injury or inconvenience to defendant or respondent.
- 1048. — Injury or inconvenience to third persons.
- 1049. — Balancing or weighing hardship or harm.
- 1050. Availability and adequacy of other remedies.
- 1051. — In general.
- 1052. — Remedies at law in general.
- 1053. — Adequacy of remedy at law.
- 1054. — Recovery of damages.
- 1055. — Insolvency or inability to pay.
- 1056. — Remedies by extraordinary writ.
- 1057. — Remedies by appeal or review.
- 1058. — Statutory remedies.
- 1059. — Administrative remedies.
- 1060. — Habeas corpus.
- 1061. Defenses or objections in general.
- 1062. Ease or difficulty of enforcement.
- 1063. Plaintiff's encouragement, acquiescence, or bad faith.
- 1064. Rights and defenses arising after commencement of action.
- 1065. Voluntary cessation or undertaking of conduct.
- 1066. Mootness and ripeness; ineffectual remedy.

II. PRELIMINARY, TEMPORARY, AND INTERLOCUTORY INJUNCTIONS IN GENERAL.

(A) NATURE, FORM, AND SCOPE OF REMEDY.

- 1071. In general.
- 1072. Nature of remedy in general.
- 1073. Purpose or function in general.
- 1074. Preservation of status quo.
- 1075. Extraordinary or unusual nature of remedy.
- 1076. Categories disfavored or subject to heavier burden.
- 1077. Discretionary nature of remedy.
- 1078. — In general.
- 1079. — Abuse of discretion.

II. PRELIMINARY, TEMPORARY, AND INTERLOCUTORY INJUNCTIONS IN GENERAL.(Cont'd)

- 1080. Mandatory preliminary injunctions.
- 1081. Scope and duration of relief.

(B) FACTORS CONSIDERED IN GENERAL.

- 1091. In general.
- 1092. Grounds in general; multiple factors.
- 1093. Balancing or weighing factors; sliding scale.
- 1094. Entitlement to relief.
- 1095. — In general.
- 1096. — Likelihood of success on merits.
- 1097. — Serious or substantial question on merits.
- 1098. Effect of granting full relief on merits.
- 1099. Equitable considerations in general.
- 1100. Public interest considerations.
- 1101. Injury, hardship, harm, or effect.
- 1102. — In general.
- 1103. — Unclear, unlikely, doubtful or speculative injury.
- 1104. — Clear, likely, threatened, anticipated, or intended injury.
- 1105. — Substantial nature of injury.
- 1106. — Irreparable injury.
- 1107. — Injury or inconvenience to defendant or respondent.
- 1108. — Injury or inconvenience to third persons.
- 1109. — Balancing or weighing hardship or injury.
- 1110. Availability and adequacy of other remedies.
- 1111. — In general.
- 1112. — Remedies at law in general.
- 1113. — Adequacy of remedy at law.
- 1114. — Recovery of damages.
- 1115. Defenses and objections.
- 1116. — In general.
- 1117. — Mootness and ripeness; ineffectual remedy.

III. TEMPORARY RESTRAINING ORDERS IN GENERAL.

(A) NATURE, FORM, AND SCOPE OF REMEDY.

- 1121. In general.
- 1122. Nature of remedy in general.
- 1123. Purpose or function in general.

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III. TEMPORARY RESTRAINING ORDERS IN GENERAL.(Cont'd)

- 1124. Preservation of status quo.
- 1125. Extraordinary or unusual nature of remedy.
- 1126. Discretionary nature of remedy.
- 1127. Scope and duration of relief.
- 1128. Relation or conversion to preliminary injunction.

(B) FACTORS CONSIDERED IN GENERAL.

- 1131. In general.
- 1132. Grounds in general; multiple factors.
- 1133. Balancing or weighing factors; sliding scale.
- 1134. Entitlement to relief; likelihood of success.
- 1135. Equitable considerations in general.
- 1136. Public interest considerations.
- 1137. Injury, hardship, harm, or effect.
- 1138. — In general.
- 1139. — Irreparable harm.
- 1140. Availability or adequacy of other remedies.
- 1141. — In general.
- 1142. — Adequacy of remedy at law.
- 1143. Defenses and objections.
- 1144. — In general.
- 1145. — Mootness and ripeness; ineffectual remedy.

IV. PARTICULAR SUBJECTS OF RELIEF.

(A) COURTS AND ACTIONS IN GENERAL.

- 1151. In general.
- 1152. Commencement and prosecution in general.
- 1153. — In general.
- 1154. — Confession of judgment as prerequisite.
- 1155. — Grounds in general.
- 1156. — Defenses available in action sought to be enjoined.
- 1157. — Fraud, misrepresentation, or mistake.
- 1158. — Payment, discharge, or set-off.
- 1159. — Proceedings for recovery of real property.
- 1160. — Particular proceedings or remedies in actions.

IV. PARTICULAR SUBJECTS OF RELIEF.(Cont'd)

- 1161. Actions or proceedings in same court.
- 1162. Actions or proceedings in other courts.
- 1163. — In general.
- 1164. — Federal/state issues.
- 1165. Actions or proceedings in other states.
- 1166. Actions or proceedings in other countries.
- 1167. Multiple, successive, or duplicative suits in general.
- 1168. Abusive, vexatious, or harassing litigation.
- 1169. — In general.
- 1170. — Particular cases.
- 1171. Enjoining defenses to actions.
- 1172. Judgments, and enforcement thereof.
- 1173. — In general.
- 1174. — Foreign judgments.

(B) ADMINISTRATIVE AGENCIES AND PROCEEDINGS IN GENERAL.

- 1181. In general.
- 1182. Investigations.
- 1183. Rules and regulations.
- 1184. Hearings and adjudications.
- 1185. Judicial review.

(C) CRIMINAL MATTERS AND PROCEEDINGS.

- 1191. In general.
- 1192. Acts of law enforcement officers in general.
- 1193. Commission of crime in general.
- 1194. Particular criminal acts.
- 1195. Criminal conspiracies and combinations.
- 1196. Prosecution of criminal laws.
- 1197. — In general.
- 1198. — On ground of invalidity.
- 1199. — Particular prosecutions.
- 1200. Prisons and prisoners.
- 1201. — In general.
- 1202. — Placement and transfer in general.
- 1203. — Health, medical, and nutritional issues.
- 1204. — Mail and other communications.
- 1205. — Access to courts and legal assistance.

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IV. PARTICULAR SUBJECTS OF RELIEF.(Cont'd)

- 1206. — Duration of confinement and release.
- 1207. — Restrictions on litigation and filings.

(D) PROPERTY IN GENERAL.

- 1211. In general.
- 1212. Personal property in general.
- 1213. Injury to personal property.
- 1214. Real property in general.
- 1215. Sale, mortgage, or other disposition.
- 1216. Trespass or other injury to real property.
- 1217. — In general.
- 1218. — Necessity and sufficiency of title or possession.
- 1219. — Encroachments by buildings, fences, and other structures.
- 1220. — Removal of or injury to timber or crops.
- 1221. Covenants as to use of property.
- 1222. — In general.
- 1223. — Race, age, and other class-based restrictions.
- 1224. — Alcoholic beverages.
- 1225. — Animals and pets.
- 1226. — Parking vehicles, trailers, or boats.
- 1227. — Business, commercial, or industrial uses.
- 1228. — Buildings and other structures.
- 1229. — Fences and hedges.
- 1230. — Other particular uses and restrictions.
- 1231. Freezing or protecting assets pending litigation.
- 1232. Fraudulent conveyances and transfers.
- 1233. Building and safety codes.
- 1234. Forfeitures and proceedings therefor.
- 1235. Landlord and tenant.
- 1236. Wills, trusts, probate, inheritance, and dower.

(E) GOVERNMENTS, LAWS, AND REGULATIONS IN GENERAL.

- 1241. In general.
- 1242. Powers and actions in general.

IV. PARTICULAR SUBJECTS OF RELIEF.(Cont'd)

- 1243. Injunctions sought by government in general.
- 1244. — In general.
- 1245. — Police power; health, safety, and welfare.
- 1246. Injunctions against government entities in general.
- 1247. Injunctions against government officials in general.
- 1248. Meetings and proceedings in general.
- 1249. Passage of ordinances and laws in general.
- 1250. Injunctions to enforce laws and regulations in general.
- 1251. Injunctions against enforcement of laws and regulations.
- 1252. — In general.
- 1253. — On ground of invalidity.
- 1254. Creation, alteration, and regulation of government entities.
- 1255. Public improvements and assessments therefor; urban renewal.

(F) GOVERNMENT PROPERTY, FACILITIES, FUNDS, AND REVENUE.

- 1261. In general.
- 1262. Sale, lease, or other disposition.
- 1263. Control and use in general.
- 1264. Trespass or other injury to public property.
- 1265. Transportation in general.
- 1266. Streets, highways, sidewalks, and alleys.
- 1267. Bridges.
- 1268. Parks and forests.
- 1269. Public funds; grants and loans.
- 1270. Public services.
- 1271. Public housing.
- 1272. Public revenue; bonds and taxation.

(G) SOCIAL SECURITY, WELFARE, AND OTHER PUBLIC PAYMENTS.

- 1281. In general.
- 1282. Social Security.
- 1283. — In general.
- 1284. — Old age and survivor benefits.
- 1285. — Supplemental security income.
- 1286. — Disability benefits.
- 1287. Aid to children and families.

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IV. PARTICULAR SUBJECTS OF RELIEF.(Cont'd)

- 1288. Food and nutritional benefits.
- 1289. Health care; Medicare and Medicaid.
- 1290. Housing subsidies.

(H) EMPLOYMENT AND COMPENSATION.

- 1301. In general.
- 1302. Adverse employment actions.
- 1303. Compensation and benefits.
- 1304. Public employees and officials.
- 1305. Judges and other judicial officers or employees.
- 1306. Employment of physicians; hospital staff privileges.

(I) EDUCATION.

- 1311. In general.
- 1312. Public elementary and secondary education.
- 1313. — In general.
- 1314. — School districts and boards in general.
- 1315. — Establishment and closing of schools.
- 1316. — Administration of schools; property, contracts, and liabilities.
- 1317. — School funding and financing; taxation.
- 1318. — Employment matters.
- 1319. — Students.
- 1320. Private elementary and secondary schools.
- 1321. Home schooling and compulsory attendance issues.
- 1322. Post-secondary education.
- 1323. — In general.
- 1324. — Governing bodies and officials.
- 1325. — Establishment and closing of institutions.
- 1326. — Administration; property, contracts, and liabilities.
- 1327. — Funding and financing.
- 1328. — Employment matters; tenure.
- 1329. — Students.
- 1330. Miscellaneous educational institutions.
- 1331. Athletics.
- 1332. Discrimination; segregation and desegregation.

(J) ELECTIONS, VOTING, AND POLITICAL RIGHTS.

- 1341. In general.
- 1342. Political parties and organizations.
- 1343. Voters, registration, and eligibility.
- 1344. Nominations and primary elections.
- 1345. Candidates and ballot access.
- 1346. Conduct of elections.
- 1347. Redistricting and reapportionment.
- 1348. Initiative, referendum, and recall.
- 1349. Contributions and expenditures.

(K) CONTRACTS.

- 1351. In general.
- 1352. Breaches in general.
- 1353. Franchise agreements.
- 1354. Public contracts.
- 1355. — In general.
- 1356. — Award of contract; bids and bidders.

(L) TRADE OR BUSINESS.

- 1361. In general.
- 1362. Licenses, permits, and certifications in general.
- 1363. Injury to or restraint of trade or business in general.
- 1364. Charges and prices in general.
- 1365. Manufacturing.
- 1366. Sales and marketing in general.
- 1367. Accountants.
- 1368. Agriculture.
- 1369. Architects and engineers.
- 1370. Attorneys; unauthorized practice of law.
- 1371. Financial institutions, transactions, and services.
- 1372. Food and beverages; restaurants.
See also FINANCE, BANKING, AND CREDIT.
- 1373. Funeral directors, cemeteries, and related occupations.
- 1374. Gambling and gaming.
- 1375. Hospitals, pharmacies, and health care professionals.
- 1376. Hotels, motels, and other lodging.
- 1377. Insurance.
- 1378. Intoxicating liquors.
- 1379. Public amusement and entertainment.
- 1380. Publishing, journalism, and bookselling.
- 1381. Sexually-oriented businesses; obscenity.

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**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1382. Other particular businesses or occupations.
- 1383. Non-competition and non-solicitation issues.
- 1384. Disclosure or use of trade secrets or confidential information.

(M) ANIMALS AND PLANTS.

- 1391. In general.
- 1392. Domestic animals, livestock, and pets.
- 1393. Game and hunting.
- 1394. Fish and fishing.

(N) HEALTH.

- 1401. In general.
- 1402. Mental health.
- 1403. — In general.
- 1404. — Commitment and confinement.
- 1405. — Sexual predators and offenders.
- 1406. — Chemical dependency.

(O) MOTOR VEHICLES.

- 1411. In general.
- 1412. Licensing and registration of vehicles.
- 1413. Drivers' licenses.
- 1414. Alcohol and drug-related issues; testing.

(P) CARRIERS AND PUBLIC UTILITIES.

- 1421. In general.
- 1422. Charges and prices in general.
- 1423. Airports and aviation.
- 1424. Railroads.
- 1425. Motor carriers; trucking.
- 1426. Public transit systems.
- 1427. Buses and shuttle services.
- 1428. Taxicabs and limousines.
- 1429. Ferries.
- 1430. Towing and wrecking services.
- 1431. Telecommunications.
- 1432. Gas and electricity.
- 1433. Water, sewer, and irrigation.
- 1434. Garbage collection and hauling.

(Q) FAMILIES AND CHILDREN.

- 1441. In general.
- 1442. Marriage and divorce.

**IV. PARTICULAR SUBJECTS
OF RELIEF.(Cont'd)**

- 1443. Parent and child in general.
- 1444. Child custody, visitation, and support.
- 1445. Child care in general.
- 1446. Foster care.
- 1447. Juvenile justice.

(R) TORT OR FINANCIAL LIABILITIES.

- 1451. In general.
- 1452. Debtor and creditor in general.
- 1453. Damages in general.
- 1454. Liens and security interests.
- 1455. Interference with contractual or business relations.
- 1456. Libel and slander.
- 1457. Threats, harassment, and rights of privacy.
- 1458. Protection of name or likeness.

**(S) CORPORATIONS AND OTHER
PRIVATE ORGANIZATIONS.**

- 1461. In general.
- 1462. Corporations and business organizations in general.
- 1463. Infringement of entity's franchise, rights, or name.
- 1464. Exercise or misuse of corporate franchise or powers; acts ultra vires.
- 1465. Management of affairs or business in general.
- 1466. Capital and stock.
- 1467. Shareholders and members.
- 1468. Directors, officers, and agents.
- 1469. Acquisition and disposition of property; mortgages and security agreements.
- 1470. Bonds, notes, and debentures.
- 1471. Mergers and acquisitions; anti-take-over measures.
- 1472. Insolvency, dissolution, and forfeiture of franchise.
- 1473. Foreign corporations.
- 1474. Non-profit corporations in general.
- 1475. Unincorporated business organizations.
- 1476. Limited liability companies.
- 1477. Partnerships.
- 1478. Common interest communities.
- 1479. Charitable organizations.

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IV. PARTICULAR SUBJECTS OF RELIEF.(Cont'd)

- 1480. Beneficial and fraternal associations; clubs.
- 1481. Religious organizations.

(T) OTHER PARTICULAR MATTERS.

- 1491. In general.
- 1492. Armed services and national security.
- 1493. Indians and tribal matters.
- 1494. Searches and seizures.
- 1495. Racketeering and criminal organizations.
- 1496. Aliens, immigration, and citizenship.
- 1497. Weapons and explosives.

V. ACTIONS AND PROCEEDINGS.

(A) IN GENERAL.

- 1501. In general.
- 1502. Nature and form.
- 1503. What law governs.
- 1504. Authority of court; jurisdiction and venue.
- 1505. Persons entitled to apply; standing.
- 1506. Conditions precedent.
- 1507. — In general.
- 1508. — Underlying cause of action.
- 1509. — Exhaustion of remedies.
- 1510. — Performance of disputed obligation; tender.
- 1511. Time for proceedings.
- 1512. — In general.
- 1513. — Prematurity.
- 1514. — Laches.
- 1515. — Other particular cases.

(B) PARTIES.

- 1521. In general.
- 1522. Plaintiffs or applicants.
- 1523. Defendants or respondents.
- 1524. Necessary and indispensable parties.
- 1525. New parties; intervention and joinder.

(C) NOTICE.

- 1531. In general.
- 1532. Process and service.
- 1533. Appearance.
- 1534. Restrictions on litigants and filings.

V. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1535. Other particular cases.
- 1536. Temporary restraining orders.

(D) PLEADING.

- 1541. In general.
- 1542. Petition, complaint, or application.
- 1543. — In general.
- 1544. — Necessity.
- 1545. — Presumption of truth of allegations.
- 1546. — Sufficiency in general.
- 1547. — Sufficiency, particular cases.
- 1548. Answer or response, and subsequent pleadings.
- 1549. Demurrer.
- 1550. Amended and supplemental pleadings.
- 1551. Verification.
- 1552. Issues, proof, and variance.

(E) EVIDENCE.

- 1561. In general.
- 1562. Pleadings and affidavits as evidence.
- 1563. Presumptions and burden of proof.
- 1564. Admissibility.
- 1565. — In general.
- 1566. — Hearsay.
- 1567. Weight and sufficiency.
- 1568. — In general.
- 1569. — Standard of proof in general.
- 1570. — Prima facie showing.
- 1571. — Preponderance of evidence.
- 1572. — Clear showing or proof.
- 1573. — Clear and convincing evidence.
- 1574. — Particular cases.

(F) TRIAL OR HEARING.

- 1581. In general.
- 1582. Right or necessity.
- 1583. Waiver of right.
- 1584. Hearing procedure.
- 1585. Consolidation issues.
- 1586. Questions of law or fact.
- 1587. Instructions.

(G) DETERMINATION.

- 1591. In general.
- 1592. Dismissal before hearing.

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V. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1593. Scope of inquiry and matters considered.
- 1594. Form and requisites.
- 1595. Conditions.
- 1596. Findings and conclusions.
- 1597. Award of damages and other monetary relief.
- 1598. Operation and effect.
- 1599. Successive injunctions or applications therefor.

(H) COSTS AND FEES.

- 1601. In general.
- 1602. Attorney fees.

(I) CONTINUING, MODIFYING, OR TERMINATING.

- 1611. In general.
- 1612. Authority and discretion of court in general.
- 1613. Continuing or extending injunction.
- 1614. — In general.
- 1615. — Authority and discretion of court.
- 1616. — Grounds in general.
- 1617. — Particular cases.
- 1618. Modifying or staying injunction.
- 1619. — In general.
- 1620. — Authority and discretion of court.
- 1621. — Grounds in general.
- 1622. — Particular cases.
- 1623. Terminating, vacating, or dissolving injunction.
- 1624. — In general.
- 1625. — Authority and discretion of court.
- 1626. — Grounds or cause in general.
- 1627. — Particular cases.
- 1628. Motions and proceedings.
- 1629. — In general.
- 1630. — Successive motions or applications.
- 1631. — Persons entitled to bring motion.
- 1632. — Time for proceedings.
- 1633. — Notice.
- 1634. — Application, bill or original papers.
- 1635. — Effect of answer.
- 1636. — Evidence and affidavits.
- 1637. — Hearing and determination.
- 1638. — Effect of determination.

V. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1639. — Reinstatement or revival.
- 1640. — Bond or other security.
- 1641. — Costs and fees.

VI. BONDS AND OTHER SECURITY.

(A) REQUIREMENT IN GENERAL.

- 1651. In general.
- 1652. Purpose and function.
- 1653. Necessity and waiver in general.
- 1654. Discretion of court.
- 1655. Form and requisites.
- 1656. Grounds and considerations in general.
- 1657. Particular cases.
- 1658. Amount.
- 1659. Deposit or payment.
- 1660. Proceedings.

(B) ENFORCEMENT AND LIABILITY.

- 1671. In general.
- 1672. Grounds and considerations in general.
- 1673. Particular cases.
- 1674. Release, discharge, or waiver.
- 1675. Extent and amount of liability.

(C) ACTIONS ON BONDS.

- 1681. In general.
- 1682. Nature and form of remedy.
- 1683. Right of action; standing.
- 1684. Conditions precedent.
- 1685. Defenses.
- 1686. Jurisdiction and venue.
- 1687. Time for proceedings.
- 1688. Parties.
- 1689. Process and appearance.
- 1690. Pleading or application.
- 1691. Evidence.
- 1692. Trial or hearing, and determination.
- 1693. Damages.
- 1694. — In general.
- 1695. — Elements and factors in general.
- 1696. — Measure and amount.
- 1697. — Nominal damages.
- 1698. — Punitive or exemplary damages.
- 1699. — Costs and fees in general.
- 1700. — Costs and fees incurred on main issues.
- 1701. — Costs and fees on motion to continue or dissolve.

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VI. BONDS AND OTHER SECURITY.(Cont'd)

- 1702. — Costs and fees in proceedings to determine damage.
- 1703. Appeal and error.
- 1704. Costs and fees.

VII. VIOLATION AND ENFORCEMENT.

(A) NATURE AND FACTORS OF ENFORCEMENT.

- 1711. In general.
- 1712. Power to enforce and punish.
- 1713. Discretion of court.
- 1714. Nature of remedy in general.
- 1715. Contempt.
- 1716. — In general.
- 1717. — Civil or criminal nature.
- 1718. Duty to comply or obey.
- 1719. Elements of violation.
- 1720. — In general.
- 1721. — Knowledge and intent.
- 1722. Construction of injunction.
- 1723. Defenses and justification.
- 1724. — In general.
- 1725. — Lack of knowledge or notice.
- 1726. — Ability to obey.
- 1727. — Good faith.
- 1728. — Advice of counsel.
- 1729. — Ambiguity or vagueness of injunction.
- 1730. — Moot, ineffectual, or expired injunction.
- 1731. — Pendency of proceedings for review.
- 1732. — Illegality or invalidity of injunction.
- 1733. Acts constituting violation.
- 1734. — In general.
- 1735. — Courts and actions in general.
- 1736. — Administrative agencies and proceedings.
- 1737. — Criminal matters and proceedings; prisons.
- 1738. — Property in general.
- 1739. — Governments, laws, and regulations in general.
- 1740. — Government property, facilities, funds, and revenue.
- 1741. — Social security, welfare, and other public payments.
- 1742. — Employment and compensation.

VII. VIOLATION AND ENFORCEMENT.(Cont'd)

- 1743. — Education.
- 1744. — Elections, voting, and political rights.
- 1745. — Contracts.
- 1746. — Trade or business.
- 1747. — Animals and plants.
- 1748. — Health.
- 1749. — Motor vehicles.
- 1750. — Carriers and public utilities.
- 1751. — Families and children.
- 1752. — Tort or financial liabilities.
- 1753. — Corporations and other private organizations.
- 1754. — Other particular matters.

(B) PROCEEDINGS FOR ENFORCEMENT.

- 1761. In general.
- 1762. Authority of court; jurisdiction and venue.
- 1763. Mode of enforcement and proceedings in general.
- 1764. Persons entitled to enforce.
- 1765. Persons liable.
- 1766. — In general.
- 1767. — Non-parties in general.
- 1768. — Aiding, abetting, or encouraging.
- 1769. — Successors, assigns, and persons in privity.
- 1770. — Organizations and associations in general.
- 1771. — Corporations, officers, and shareholders.
- 1772. — Government bodies and officials.
- 1773. — Attorneys.
- 1774. — Other particular cases.
- 1775. Conditions precedent.
- 1776. Time for proceedings.
- 1777. Parties.
- 1778. Notice or process.
- 1779. Pleadings in general.
- 1780. Motions and orders to show cause.
- 1781. Evidence.
- 1782. — In general.
- 1783. — Presumptions and burden of proof.
- 1784. — Admissibility.
- 1785. — Weight and sufficiency.
- 1786. Hearing or trial.